

# **AFFIRMATIVE ACTION VERSUS DISCRIMINATION IN LOCAL GOVERNMENT – GAUTENG PROVINCE**

by

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## DECLARATION

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I declare that **AFFIRMATIVE ACTION VERSUS DISCRIMINATION IN LOCAL GOVERNMENT – GAUTENG PROVINCE** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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**SIGNATURE**

**(MR T.J MAKGOBA)**

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**DATE**

## **SPECIAL WORD OF THANKS**

My sincere gratitude goes to God Almighty for giving me the health and strength to complete this research. Above all He is the one who gives wisdom and understanding to those who diligently seek Him.

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## **ABSTRACT**

South Africa comes from an apartheid local government system that was structured to divide the citizens socially, economically, spatially and racially to ensure that only a small minority of South Africans benefited from the development and the resources of this country.

Since 1994 government departments have undergone a number of transformation processes. The Employment Equity Act 55 of 1998 and affirmative action became instrumental in ensuring racial and gender representation within the local government structures.

This study investigates the perceptions of racism, nepotism, fraud and other related problems which were perceived as a hindrance towards the effective implementation of affirmative action. The main findings of the study confirm that the implementation of affirmative action in municipalities is not effective due to lack of commitment from top management. It is anticipated that the implementation of Local Government Systems Amendment Act 7 of 2011, will enforce service delivery within municipalities.

## **KEY TERMS**

Affirmative action, Employment equity, Blacks, Whites, Service delivery, Auditor-General, Unqualified audit, Qualified audit, Financial management, Fraud and corruption.

## **LIST OF ABBREVIATIONS**

AA	AFFIRMATIVE ACTION
ANC	AFRICAN NATIONAL CONGRESS
AG	AUDITOR - GENERAL
BBBEEA	BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT
BEE	BLACK ECONOMIC EMPOWERMENT
BEECOM	BLACK ECONOMIC EMPOWERMENT COMMITTEE
BMF	BLACK MANAGEMENT FORUM
CFO	CHIEF FINANCIAL OFFICER
DPLG	DEPARTMENT OF PROVINCIAL AND LOCAL GOVERNMENT
EEA	EMPLOYMENT EQUITY ACT
LRA	LABOUR RELATION ACT
LGTA	LOCAL GOVERNMENT TRANSITION ACT
MFMA	MUNCIPAL FINANCE MANAGEMENT ACT
MM	MUNICIPAL MANAGER
MSA	MUNICIPAL STRUCTURES ACT
MSSA	MUNICIPAL SYSTEMS ACT
PMS	PERFORMANCE MANAGEMENT SYSTEM
RDP	RECONSTRUCTION AND DEVELOPMENT PROGRAMME
SALGA	SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION
SAQA	SOUTH AFRICAN QUALIFICATIONS AUTHORITY
SDA	SKILLS DEVELOPMENT ACT

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## **CHAPTER 1**

### **INTRODUCTION AND OBJECTIVE OF THE STUDY**

#### **1.1 INTRODUCTION**

The primary aim of this study is to investigate the perceptions of employees in different municipalities in the Gauteng Province who viewed appointments and promotions of staff as unfair and discriminatory. Proponents of affirmative action believe that it is necessary to address the imbalances of the past, while critics believe that it is reversed discrimination. Nevertheless, arguments for and against affirmative action are usually based on people's perceptions of the concept and also depends on the way affirmative action is implemented.

To a certain extent it is believed that affirmative action is used as a scapegoat to fulfil some people's interests. The findings of this research will have a great impact on the public service, particularly in the local government environment, where the study has been conducted. Chapter 2 of this study outlines the impact of Government policies in relation to affirmative action.

#### **1.2 BACKGROUND TO AND MOTIVATION FOR THE STUDY**

The history of colonialism and apartheid has divided South Africa according to languages, traditions, colour and race. The Constitution of the Republic of South Africa, 1996 (hereafter called the Constitution) provides for a Bill of Rights, which includes rights to freedom of trade, occupation and profession and the right to labour practices. After the first democratic elections of 1994, the Constitution subsequently superseded all former constitutions. The Constitution gives emphasis to equality of rights to all humankind, and forbids discrimination against people on the grounds of race, colour or group affiliation. Since the first democratic elections in South Africa, affirmative action, although hotly debated by proponents and critics of the concept, has become a reality in the workplace following the promulgation of the Employment Equity Act 55 of 1998.

The Constitution deals with divisions of the people of South Africa by eliminating all the barriers that were established by the previous government. People are regarded as equal and are entitled to enjoy the benefits and the resources of this country without any discrimination.

The South African Government (hereafter called the Government) had a responsibility to ensure that disadvantaged groups be advanced in order to compete equally with the advantaged groups. Although it is not possible to undo the past, it is possible to compensate, advance or improve the lives of those who have been affected or disadvantaged by the past. To a certain extent rules and regulations had to be amended to accommodate those who had been affected by the set standards. In its quest to address inequalities in the working and economic environment, the Government enforced the implementation of affirmative action at all costs. It is also imperative to note that the results of this study will be used to evaluate the alleged views of discrimination identified by employees during the implementation of affirmative action.

This study is directly linked to the researcher's field of specialisation, that is local government. The researcher assumed his career in local government in 1986 and has been involved in various management positions in different municipalities. Since the first democratic elections in South Africa in April 1994, affirmative action has been introduced vigorously in the public sector as a strategy to redress the imbalances of the past. The public sector, including local government, got seriously involved with the implementation of affirmative action, by acceleration of appointments and promotions of the previously disadvantaged groups. The researcher conducted a study of the rate at which affirmative action took place as from November 1993 up to 2012 in the public sector. The researcher joined the Eastern Regional Services Council in 1993, where for the first time two positions were advertised as affirmative action posts namely, records clerk and personnel officer. The researcher was appointed as records clerk and the other black candidate as personnel officer. The researcher had the privilege to experience the enormous change in the history of affirmative action, although it was in a lower position. The experience of working in a former white "owned" institution and of dealing with

attitudes of resistance against change, and denial from our white counterparts was a great experience.

The White Paper on Affirmative Action which was published on 23 April 1998, outlined timeframes on the implementation of affirmative action in the public sector as follows: 50% blacks in management by 1999, 30% of women in management by 1999 and 2% of people with disabilities by 2005. By the end of 1995 the Eastern Regional Services Council had already employed 25% blacks with 7% in middle management, 5% in top management and 13% in lower management including other positions at an operational level. The overall race representation was a 25:75 ratio between blacks and whites, respectively. The rapid improvement in the employment of previously disadvantaged groups including females, both black and white, versus whites only, was mainly achieved as a result of the expansion of the structure and more than 20 positions were created, ranging from a clerical position to top management. Many senior officials, the majority of whom were white males, who were not in favour of change, resigned and joined the private sector. This move contributed towards acceleration of affirmative action from top management downwards. The Eastern Regional Services Council managed to hire a quarter of the required percentage in 1995, and still had four years to meet the target.

After the Apartheid laws were repealed, the new Government faced various structural problems within the public sector. The ANC led government had to face the social and economic climate that was unstable, impartial and discriminative. The economic growth (average was just over 1.7%) declining per capita income (average -0.7 annually), increasing unemployment (using the broad definition) up from around 20% at the start of the 1970's to around 30% by 1994, and the spiraling debt problem (under former President De Klerk's government 1989-1994) were amongst the problems that required attention. Debt had increased from less than 3% of GDP to more than 9% and total government debt has more than doubled (African National Congress, 1994a:7).

Sanctions were imposed against South Africa in solidarity with banned South African political movements, trade unions and civic associations, more pressure was exerted on

the Government to recognise the democratic rights of people of other races by establishing well recognised government where all South Africans will be represented.

The ANC led government attempted to put together a policy framework that would be able to address problems that were facing this country both economically and otherwise.

- The Reconstruction and Development Programme (RDP) White Paper, which was presented to Government identified economic, social, legal, political, moral cultural and environmental problems that South Africa faced. In order to move towards the alleviation of these sizeable difficulties, it was established that a completely new macro and socio-economic framework was required (African National Congress : 1994b:1).
- The Employment Equity Act 55 of 1998, which seeks to eliminate unfair discrimination in the workplace.
- The Broad-Based Economic Empowerment (BBBEE) Act 53 of 2003, addresses inequalities resulting from systematic exclusion of majority of South Africans (pre-1994).
- The Skills Development Act 97 of 1988 and the Skills Development Levies Act 9 of 1999, seeks to provide learnerships that lead to recognised occupational qualifications.

### **1.3 AIM AND OBJECTIVES OF THE STUDY**

The aim of this study is to investigate the perceptions raised by employees in five municipalities in Gauteng Province, namely : the Ekurhuleni Metropolitan Municipality, the City of Johannesburg Metropolitan Municipality, the City of Tshwane Metropolitan Municipality, the Emfuleni Local Municipality and Midvaal Local municipality, regarding the unfair practices that have been viewed as discriminatory during the implementation of affirmative action in local government. Questionnaires were distributed to all five municipalities where the study was conducted. Since the inception of affirmative action

in South Africa on 12 October 1998 when the Employment Equity Act 55 of 1998 was assented to by Parliament, there is sufficient evidence that members of designated groups have rapidly embraced change at various levels of government, more especially in local government where the study is conducted. It is also possible that there are many people who perceive affirmative action as a source of entitlement, in the same way many members of the non-designated group (white males) used the system of apartheid as a source of privilege (Barker, 2007:148).

The objectives of the study which are pursued within the context of local government in the Gauteng province, namely the Ekurhuleni Metropolitan Municipality, the Midvaal Local Municipality, the Emfuleni Local Municipality, the City of Tshwane Metropolitan Municipality and the City of Johannesburg Metropolitan Municipality are to:

- describe the legislation and policies of affirmative action.
- discuss the guidelines for the implementation of the policy of affirmative action.
- discuss the practical implementation of affirmative action.
- evaluate the perceptions of the employees on affirmative action.
- make recommendations to promote affirmative action.

#### **1.4 PROBLEM STATEMENT**

Local government as the third sphere of government is a highly politicised environment, contrary to its overall mandate being to deliver a general service to its communities. When there is a majority of members of the leading or governing political party in a particular municipality, management is likely to be tempted to focus on groups and individual interests even in the implementation of affirmative action. Cases of nepotism, corruption and incompetence of staff are alleged to be prevalent in most of these municipalities.

In spite of the provisions of Chapter 2 of the Constitution of the Republic of South Africa, 1996 and the Employment Equity Act 55 of 1998 which protect the rights of all previously



disadvantaged groups, the appointments and promotions are allegedly apportioned to the active members of the governing party, friends and relatives of councillors and executive directors. It is alleged that better qualified and experienced officials are denied opportunities, and as a result they feel that they are deliberately suppressed so they become frustrated and resign. Many officials who had extensive experience both black and white, have resigned from the public sector because of political suppression. As a result the Government spends millions of rand in advertisements and training every year in an attempt to close the vacuum that has been left by these professionals. Most qualified blacks who hoped to benefit from the democratic Government's affirmative action programme are experiencing a second blow, first from the apartheid regime who refused to appoint them in higher positions because of the colour of their skin, and now from the democratic Government, as they are accused of not having been involved in the struggle when the activists were fighting against the apartheid regime.

The Government avails huge budgets for skills development of staff but it is a process which cannot be achieved overnight. The danger of appointing inexperienced officials has been noticed when most of these officials become overstressed and have a mental break down due to their inability to absorb too much too quickly. However, entrusting people with less responsibility than they can handle is also harmful (Venter 2001:37). In some of these departments the responsibilities of individuals have been taken away from their positions and the affected employees end up earning salaries for doing nothing. Affirmative action programmes should aim at self-upliftment through creating more equal opportunities (Barker, 2007:25).

Many black and white officials were affected psychologically because of this deliberate suppression. Some have been medically boarded and some are just waiting for their pension time. The wrong implementation of affirmative action has cost the public sector millions of rand paid out to employees who were discriminated against during interviews due to failure to follow proper channels during the appointment and promotion processes.

The problem statement therefore is to investigate the perceptions regarding the subject, such as whether affirmative action is apartheid in reverse or is affirmative action favouring certain individuals or a specific race, namely, blacks at the expense of whites, and whether affirmative action means appointment of political activists in key positions of Government.

## **1.5 KEY RESEARCH QUESTIONS**

The majority of the people of South Africa have consensus on the fact that apartheid denied the majority of the South Africans (blacks, white and black females and the disabled) an opportunity to enjoy equal benefits as citizens of this country. There is no justification why blacks and other disadvantaged groups were discriminated against by the apartheid government. The study will investigate why affirmative action is considered to be discrimination in reverse and whether affirmative action is effectively able to correct the prevailing anomalies that have been in existence for more than 300 years. The focus of the research is on the five municipalities in Gauteng province namely: the Ekurhuleni Metropolitan Municipality, the City of Johannesburg Metropolitan Municipality, the City of Tshwane Metropolitan Municipality, the Emfuleni Local Municipality and the Midvaal Local Municipality. In the next chapters the study will investigate the prevailing perceptions of discrimination and the various attitudes of employees towards affirmative action.

The following concerns/questions will be attended to in order to address the problems:

- Are there any problems relating to the conduct of the employer whose actions were interpreted as unfair labour practice to designated groups?
- Were there any acts of discrimination against other individuals from the disadvantaged groups who could not be hired or promoted because they were not members of the ruling party?
- Were there any problems relating to management's refusal to involve trade union representatives as observers during the interviews in municipalities which resulted

in creating suspicions towards decisions taken by the interviewing panel to be unfair and questionable?

- Which actions according to the employees were viewed as interference by some councillors into administration which impeded the effective implementation of affirmative action?
- Were there any problems relating to training of personnel that might have hindered the successful implementation of affirmative action in local authorities in Gauteng province?

## **1.6. LITERATURE REVIEW**

The study outlines the definition of affirmative action and the impact of Government policies in the public sector. This study does not focus on public sector as a whole, but only on certain municipalities within the Gauteng province. This research dissertation will broadly address the effects of affirmative action within local government in three categories.

Firstly, how the emotions of individuals are affected by the implementation of affirmative action policies.

- (i) These include studies on stress experienced by white males as a result of affirmative action. As jobs become scarcer, and more blacks are affirmed, it is likely that whites will desire to preserve their established prerogatives, according to psychological reactance theory propounded by Brehm and Brehm (in Tesser, 1995:270).
- (ii) The general expectations of the disadvantaged groups which have not yet been fulfilled.

- (iii) Black professional employee's perceptions of affirmative action, which is highly challenged by political and organisational change in the work environment and as a result affirmative action is viewed negatively as a cycle of conflict.

The second category of research revolves around a case study which reveals the attitudes of white municipal employees on the implementation of affirmative action in the former Eastern Gauteng Services Council and the Midvaal Local Municipality.

The third category consists of a number of case studies conducted in the Ekurhuleni Metropolitan Municipality, the City of Johannesburg Metropolitan Municipality, the Emfuleni Local Municipality, the City of Tshwane Metropolitan Municipality and the Midvaal Local Municipality. The topics include an evaluation of the current policies systems employed by these municipalities towards a successful implementation of affirmative action in local government. Their programmes should be characterised by attempts to redress historical gender and racial inequalities (Maphai 1992:72).

Bayat and Meyer (1994:283) view affirmative action as an important strategy which is necessary in order to achieve the following objectives:

- Restitution for past discrimination
- Combating racism
- The equitable distribution of public service job opportunities.

Bayat and Meyer's view on affirmative action is that affirmative action should address issues of restitution from the past discrimination and combating racism among racial groups. To ensure that other parties are not affected negatively in the process, affirmative action should be implemented in consideration of other people's rights, in a fair and transparent manner (Finnmore & Van Rensburg 2001:410).

To ensure that affirmative is effective, management should create a conducive environment for all, as Human (1994:8) asserts that the focus of affirmative action should

be on a people management approach which takes into account the organisational climate/environment in which people participate. The author believes that affirmative action should be fair, transparent and efficient to all the participants. The author further advocates that a committee consisting of representatives from the employer, employees and unions should be established in order to display transparency and harmony between all parties.

The affirmative action process should be fair, transparent and efficient and suitable candidates should be appointed in positions they are qualified for, and further training be encouraged to ensure effective and efficient service delivery. The management should train and develop affirmative appointees in order to enable them to perform and be efficient. Management should also provide opportunities for them to learn (Human, 1993:12).

It is also imperative to ensure that the staff is informed about the training and development policy of the organisation. The training and development strategies should be progressive and not a once off exercise. According to Castle (1996:44) strategies and practices associated with the human resources development concept of affirmative action emphasise planning, induction, specialisation, compensation and training. He also alludes to the fact that individuals from previously disadvantaged groups experience affirmative action programmes differently, since to some extent their expectations are not met at the envisaged time and the environment does not respond quickly to the call. Designated employers should establish training programmes for newly appointed staff and the existing staff to ensure effective integration of skills during the implementation of affirmative action.

The success of affirmative action relies on a total commitment from both the employee and the employer. In support of the above view, Pillay (1998:17) indicates that a critical success factor identified in most texts on affirmative action is the need for total commitment to the process. Without any exerted effort or commitment, the affirmative action process will fail. From the above deduction Thomas (1990:107) fully supports the

notion that success of affirmative action lies on a mutual contribution and commitment from both the employer and the employee. However, the white male employees who are not beneficiaries of affirmative action should be clearly informed about affirmative action, to avoid unnecessary tension and resistance between these employees.

It is the duty of Management to ensure that both the beneficiaries and non-beneficiaries of affirmative are conversant with the processes of affirmative action. According to Bendix (1996:592) most of the controversies and problems surrounding affirmative action arise from the manner in which affirmative action is implemented. Wrong implementation of affirmative action occurs because organisations see affirmative action as a political imperative and not as a business objective and as a result unsuitable candidates are appointed merely for window dressing and cannot handle their specific tasks. Ramphela (1995:25) cited the importance of affirmative action as a strategy to bring a balance in social, political and economic fields. She alluded to the fact that in as much as white South Africans were pained and privileged by apartheid, both groups of men are privileged by sexism. Women should be afforded an opportunity to penetrate, contribute to and participate in the economic world. However, affirmative action should not be viewed as window dressing but an effective instrument that brings transformation across all races. Thomas (1996:8) purports that organisations should not introduce affirmative action in organisational environments where managers believe that a few black female faces will make the organisation appear to look politically correct, but failing to fulfil their main tasks. Affirmative action employees should be properly trained to take up their work responsibilities rather than to display window dressing.

Window dressing should be discouraged at all costs, because it robs organisations of the required skills of competent individuals, it derails the purpose of affirmative action, it distracts the morale of the workers and also has a negative impact on service delivery. Bendix (2001:435) defines affirmative action as a purposeful and planned placement or development of competent, or potentially competent persons in, or to, positions from which they were debarred in the past, in an attempt to redress past disadvantages and to render the workforce more representative of the population. Thomas (1993: 92) is of the

opinion that affirmative action programmes fail because they are seen in terms of filling the quotas, and top management is often not committed to the programmes and appears to be making the changes while in practice retaining the status quo. When top management is committed to affirmative action, serious changes will be effected successfully.

According to Nathan (1994:142) affirmative action should be designed and implemented in a manner that takes into account the arguments raised by its opponents, that placing inexperienced people into positions of authority will inevitably compromise professional standards and undermine the morale of both black and white personnel. The primary aim of affirmative action programmes should be to train the former disadvantaged groups to be effective in their jobs rather than to satisfy quotas.

Affirmative action should not be seen as compensatory effort to the former disadvantaged groups, but a corrective measure which is intended to address the needs of the former disadvantaged groups as a collective without compromising the requirements and the processes. Nkuhlu (1993:12) states that affirmative action would be futile if its only aim is to compensate for the wrongs of the past without due consideration to job requirements, experience and training. Affirmative action policies should encourage training, growth and development. Also in support of affirmative action, Tinarelli (2000:01) states in relation to the Employment Equity Act, that it is not unfair to discriminate where the reasons for discrimination are affirmative action and it is for the protection and advancement of persons from previously disadvantaged groups. However, affirmative action will be effective if its process is aligned to the skills and qualifications of the candidates. Tinarelli (2000:20) further states that the employer is entitled to discriminate when appointing and promoting persons from previously disadvantaged groups without it being deemed unfair as all is consistent with the purpose of the Act, in other words the employer can treat an employee or applicant on a preferential basis as long as all affirmative action requirements and procedures are met.

During the implementation of affirmative action, the issue of gender sensitivity should also be considered. Human (1993:81) is of the opinion that gender discrimination in

employment was also anchored in legislative measures, for example, the Wage Act, 44 of 1937, subsequently, Act 45 of 1957 permitted differentiation between categories of employees on the grounds of gender and laid the basis for discriminatory wage determination which was also applicable in terms of race hence affirmative action was introduced to address those inequalities.

Many employers have excuses why they do not want to employ women in some of their key positions, inter alia lack of experience, skills and gender compatibility. Jeffrey (1998:37) states that employers should allow battling employees sufficient time to attain necessary skills and experience rather than to dismiss them when they cannot perform. In other words, affirmative action is a process of training, development, monitoring and mentoring of those who have been affirmed. Peverett (1994:01) describes affirmative action as a vehicle to accelerate the employment and promotion opportunities of blacks, women, the disabled and any other disadvantaged groups to ensure equitable representation in all occupational categories and levels in the workplace. Affirmative action creates opportunities for promotions to disadvantaged groups. Tinarelli (2000:49) endorses Section 13 of the Employment Equity Act 55 of 1998, which requires all designated employers to undertake affirmative action measures to ensure that suitably qualified people from designated groups have equal opportunities and that they are equally representing the demographics of the country in terms of gender, race and disability, in all occupational categories and levels of their workforce.

Affirmative action should not be regarded as a racial or political tool intended to benefit certain individuals at the expense of other individuals. Bendix (2010:593) states that the purpose of Affirmative Action is not to unfairly discriminate against other races, but that it will only become unfair and discriminatory if a previously disadvantaged person is appointed at all costs without allowing other persons to compete. Thus if affirmative action legislation is properly implemented, there is no reason why some people should have a negative attitude towards affirmative action. Barker (2007:25) states that affirmative action programmes should aim at self-upliftment through creating more equal opportunities. Barker insists that affirmative action programmes should create



opportunities for the previously disadvantaged groups, however there should be willingness from the beneficiaries to develop and uplift themselves to acquire those opportunities rather than seeing affirmative action as an entitlement to the previously disadvantaged groups.

## **1.7 KEY TERMS**

**Affirmative action** is a strategic process implemented by an organisation with the intention of dealing with barriers towards equal employment opportunity, through a variety of activities such as selection and recruitment, development and training and promotion practices targeting all previously disadvantaged communities (Human 1993:12).

**Blacks** refer to Africans, Coloureds and Indians.

**Discrimination** is an intentional or unintentional act which adversely affects employment opportunities because of race, colour, religion, disability, gender, national origin and other factors.

**Designated employers** are defined as those who have more than fifty employees in their employment or less than fifty but their turn over targets are between R2 million and R25 million per annum depending on the industry, in terms of the Employment Equity Act 55 of 1998.

**Designated groups** means blacks women and people with disabilities.

**Diversity management** refers to the ability to work with individuals from different backgrounds in such a manner that they reach their full potential, in pursuit of organisational objectives, without anyone being disadvantaged by irrelevant considerations (Finnmore & Van Rensburg, 2001:410).

**Employment equity** is a desired goal for employers in which discrimination does not occur and the workforce is adequately trained, has equality of opportunity and is representative of the population as a whole of regional demographics (Potts, 2000:2).

**Job discrimination** is harmful actions in a workplace directed towards a person or groups who are the targets of prejudice.

**People of colour** refers to Africans, coloured and Indians.

**Prejudice** is a negative feeling towards people based on their group affiliation.

**Previously disadvantaged** – refers to blacks (Africans, coloureds and Indians), women and disabled persons.

**Reserve discrimination** is the notion that employers are required to give preferential treatment to targeted groups and place white males at a disadvantage.

**Suitably qualified** for the purpose of the Employment Equity Act, means that a person may be suitably qualified as a result of any combination of that person's formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job.

**Theory** is a set of systematically inter-related concepts, definitions and propositions that are advanced to explain and predict phenomena (Cooper & Schindler, 2001:47).

**Unfair discrimination** implies imposing burdens on previous victims of past patterns of discrimination, or treating people differently in such a manner that it significantly impairs their fundamental dignity as human beings (De Waal, Curry & Erasmus, 2001:213).

**Window dressing** refers to the deceptive practice of hiring people from previously disadvantaged groups in order to make a company's profile comply with affirmative action in terms of equity without giving power to the affirmed employees.

## **1.8 VALUE OF RESEARCH**

The research will contribute to the knowledge with regard to the aims and objectives of affirmative action and procedures that need to be followed whenever one is aggrieved or feels discriminated against during the process. Charlton and Van Niekerk (1994:108) quoted from the ancient Chinese proverb..."if you want one year prosperity grow grain, if you want ten years prosperity, grow trees, but if you want one hundred years of

prosperity, grow people”. This statement confirms the importance of development and training of newly appointed employees from the former disadvantaged groups.

The findings of this research will also assist in identifying the problem areas in the implementation of affirmative action in municipalities. Whenever positions are advertised, the requirements for the post should be clearly stated. It is also important to state whether the post is designed for members of designated groups or not. The unions must ensure that the employer adheres to the affirmative action principles and that correct procedures are followed during appointments of staff.

The following steps will be followed in the study:

- Discussion on the need for this study in terms of problem statement, purpose of and objective of the study.
- Provision of theoretical analysis for the study.
- Evaluation of the subject matter as implemented in practice against the guidelines from the theoretical background.
- Data collection by means of a structured questionnaire.
- Systemising and processing of responses on the questionnaire.
- Analysis of the data.
- Application of knowledge by means of findings and recommendations.

#### **1.8.1 Method of data collection**

A structured self-completion questionnaire was used to collect data from the following respondents, executive directors, managers in middle management and lower management and administrative staff in the mentioned municipalities. The questionnaire

comprised questions to select responses from the respondents by providing alternatives rather than asking them to provide their own detailed answer. The benefit of a structured questionnaire is that it helps respondents to focus on the subject, saves time, and is relatively objective to analyse and tabulate.

The questionnaire used in this research is Linkert scaled as follows:

1. Strongly disagree, 2. Disagree, 3. Indifferent, 4. Agree, 5. Strongly agree.

The questionnaire ( Annexure A) is divided into two sections, namely:

- Section A : General information including aspects such as respondents' posts description, post level, municipality, period in present post and gender.
- Section B : Rating aspects such as perceptions of employees regarding unfair practices, trade union involvement, why affirmative action may be considered to be discrimination in reverse, which actions impeded effective implementation of affirmative action, problems relating to personnel training, empowerment and the effects of window-dressing.

Questionnaires were distributed to five municipalities and all responses collectively form part of the report. The attached copy of the questionnaire was used to obtain information from the employees.

### **1.8.2 Method of data analysis**

The employees were interviewed individually and information collected was thoroughly investigated and verified. Research analysis was compiled and a final report formulated. The outcome of this research will assist the affected municipalities to improve and develop new strategies in the implementation of affirmative action.

### **1.8.3 Target population and sample**

The target population for this study includes executive directors, managers, middle management, lower management and administrative staff members who may directly or indirectly be affected positively or negatively by the implementation of affirmative action as employees of the municipality. A description of the population and sampling procedures may be phrased as follows:

The population for this study comprised black and white males and female employees of the ages of 21 to 45 in five municipalities in the Gauteng province, namely: the Midvaal Local Municipality, the Emfuleni Local Municipality, the City of Johannesburg Metropolitan Municipality, the Ekurhuleni Metropolitan Municipality and the City of Tshwane Metropolitan Municipality.

The employees were selected randomly from the participating municipalities as follows: one executive director (preferably human resources) seven managers, twelve from middle management, fifteen from lower management and fifteen administrative staff. The total sample for the study was fifty candidates for each municipality times five municipalities, which equalled two hundred and fifty questionnaires.

### **1.8.4 Validity and reliability**

The study will be based on views expressed by the respondents. Emphasis is placed on ensuring that the validity, content and construct of the questionnaire are of acceptable standard.

### **1.8.5 Ethical considerations**

The researcher upheld ethical principles throughout the research. Permission to conduct the research was sought and obtained from the authorities and municipalities that were involved in the study. The researcher would like to keep respondents to all questionnaires anonymous to protect their identity and integrity.

The participants were not coerced to participate in the study in order to discredit or to destroy the integrity of the management or to fulfil a particular mission. The researcher has not been biased towards any political party, race, religion or had intention to serve or discredit any of the above due to their culture, race and beliefs.

## **1.9 LIMITATION OF THE STUDY**

The study was conducted in five municipalities in Gauteng Province namely, the Ekurhuleni Metropolitan Municipality, The City of Johannesburg Metropolitan Municipality, The City of Tshwane Metropolitan Municipality, the Emfuleni Local Municipality and the Midvaal Local Municipality. The research was conducted at the time when some of the municipalities were under investigation for maladministration, corruption, nepotism and financial misuse and there were serious tensions between the employers and the employees. Some of the respondents were advised not to give any information unless it was verified by the Head of the department. Some of the officials who were willing to participate withdrew for fear of victimisation.

## **1.10 STRUCTURE OF THE STUDY**

The dissertation is divided into seven chapters which form a logical unit so as to present the scope of the dissertation and how the different points of discussion develop. These are summarised below.

- **Chapter 1** is an introductory chapter that contains the background to the study, motivation for the research topic, the problem statement, the methodology of the study, scope and limits of the study, the literature review, reference techniques, definitions of terminology and a summary of the chapters of the dissertation.
- **Chapter 2** focuses on Government legislation and policies described as “affirmative action policies” versus discrimination.
- **Chapter 3** addresses the guidelines for future implementation of affirmative action in local government.

- **Chapter 4** discusses the methodology used to investigate the research problem identified in chapter 1.
- **Chapter 5** provides information on the case study and the practical implementation of affirmative action in local government in Gauteng Province.
- **Chapter 6** deals with research analysis from different role-players, the interpretation and analysis of the data, and the conclusions.
- **Chapter 7** contains findings, conclusions and recommendations in respect of the implementation of affirmative action within municipalities.

## **1.11 CONCLUSION**

The introduction and the rationale for transformation in the South African public service in this dissertation ensures that the reader is provided with a framework for understanding the need for implementation of affirmative action in the public service with specific reference to local government. The problem statement is of vital importance and should receive careful consideration during the entire study. A short discussion of each chapter is given in this chapter to ensure that the meaning and the purpose of the study are maintained in the process. The key concepts used in the dissertation are also explained.

Chapter two focuses on the provisions of South African legislations and policies regarding the implementation of affirmative action.

## **CHAPTER 2**

### **SOUTH AFRICAN GOVERNMENT POLICIES PERTAINING TO AFFIRMATIVE ACTION VERSUS DISCRIMINATION**

#### **2.1 INTRODUCTION**

While the previous chapter paid attention to the background of the study and the motivation of the research topic, in this chapter the study will outline government policies in relation to affirmative action, namely the Constitution, the Labour Relations Act 55 of 1995, the Reconstruction and Development Programme (RDP) of 1994, the Employment Equity Act 55 of 1998, the Broad Based Black Economic Empowerment Act 53 of 2003, the Skills Development Act 97 of 1998 and the Skills Development Levies Act 9 of 1998. These Acts are not exhaustive to the subject, but only a few to mention.

South Africa is still recuperating from its past, where all spheres of government including the business sector, were structured to divide citizens socially, economically, spatially and racially to ensure that only a small minority of South Africans, specifically, whites benefited from the resources and development of South Africa. The word 'apartheid' was used, literally in Afrikaans and Dutch means apartness and the adoption of the policy was intended to bring a system of racial segregation into South Africa from 1948 to 1994. Apartheid was designed to form a legal framework for continued economic and political dominance by whites. Under the apartheid system people were legally classified into racial groups. Whites were recognised as the main race and other races were inferior. Blacks, Indians and coloureds were geographically and forcibly separated from each other on the basis of legal classification. In practice, this prevented non-whites even if they were South African residents, from having a vote or influence in government. Although the word apartheid is usually attributed to the Afrikaner dominated government, the policy is partially a legacy of British colonialism which introduced a system of pass laws in the Cape Colony and Natal during the 19<sup>th</sup> century. The Group Areas Act of 1950 became the heart of the apartheid system as it was designed to separate the racial groups geographically and economically. Without affirmative action, the inequalities will



continue to exist for individuals who are not white males thereby it creates more equality for all persons (Mathis & Jackson, 2003:144).

Since 1994, with the democratisation of this country, local government authorities have undergone a number of transformation processes, which saw the country moving away from the apartheid local government system into a democratic government system. The most prominent response to achieving equality and representation in the Public Service came through the introduction of the Employment Equity Act 55 of 1998 which calls for a complete prohibition of unfair discrimination against employees and requires that all employers adopt affirmative action measures to ensure that suitably qualified people from designated groups have equal employment opportunities. Affirmative action is needed to offset the effects of many years of discrimination against specific groups. (Muchinsky, Kriek and Schreuder, 2000:124). The main question the researcher answers in this study is whether affirmative action is discrimination in reverse against whites or the upliftment of blacks at the expense of whites?

The various definitions of affirmative action will be evaluated in order to formulate a relevant definition for the research study. Charlton & Van Niekerk states that affirmative action is a topic which evokes much emotion and heated debate among South Africans from all walks of life. (Charlton & Van Niekerk 1994:148). It is true because the concept has both positive and negative aspects attached to it, as there are groups that supports it and those who are opposed to it. Other researchers reveal that there are still prevailing perceptions and attitudes with regards to affirmative action. In South Africa, affirmative action originated from the equality clause (Section 9) of the Constitution. Although affirmative action originated in America, the concept was practised worldwide in all spheres of life including in business. Practices which were perceived as discriminative needed to be changed in order to accommodate others. The South African Government's intervention is required to effectively remedy inequalities within various institutions and areas of employment.

## **2.2 RATIONALE BEHIND AFFIRMATIVE ACTION**

Without historical background it would be difficult to give a clear picture of what the previously disadvantaged people have gone through and why those people should be affirmed.

### **2.2.1 South African perspective**

South Africa has a long history of racial inequality in the workplace. During the Anglo Boer War of 1899-1902, many black farmers were able to meet the demand for produce or to avail themselves for employment opportunities at good wages. The Boer fighters surrendered to the British and the Peace Treaty of Vereeniging was signed on 31 May 1902. South Africa became a British colony and naturally policies were heavily influenced by this imperial power. The signing of the Treaty of Vereeniging, that ended the Anglo Boer War, left the issue of the rights of the Africans, to be decided by the future self-governing (white) authority. The Boer and British together gained independence from the imperial rule to a new nation state, regarded as the Union of South Africa which took place in 1910. A National Party (NP) was formed in 1914 with a slogan "South Africa First". The National Party came into power with the alliance of the Labour Party in 1924. Mr. Hertzog became the first Nationalist Prime Minister in 1924-1929. Further attempts to advance the cause of Anglo-Afrikaner reconciliation brought about fusion of the NP with General Jan Smuts in 1934 to create the United Party. In social terms Afrikaner nationalisation embraced a policy of strict racial segregation (Masiloane, 2001:20).

The Dutch Reformed Church exerted power influence through its theologians to refine biblical defence of racial separation. The Afrikaans bible and dictionary were completed in 1925 and Afrikaans became an official language alongside English. From 1910 to 1948 there was a division between white political parties, the British and Afrikaner cultural traditions until the Afrikaner dominated National Party won the elections in 1948, and a policy known as "apartheid" was implemented. After the 1948 elections, the National Party widened the divisions between whites and blacks by distributing jobs

along racial lines, suppressing black trade unions and providing sub-standard education for non-whites. The democratic transition in South Africa started in 1990 and culminated in the first democratic elections in 1994. The unethical imposition of discrimination against black people contributed to a general lack of opportunities for blacks and brought inequality in the social, economic and labour avenues (Leibbrandt, Woolard & Finn 2010:2). The enactment of the Constitution, introduced a new breed of South African society. The confidence that was lost by blacks, their humanity, courage, dignity and self-respect, have been restored through the implementation of affirmative action (Mathis & Jackson, 2003:144).

It is imperative to mention some of the laws adopted by the previous government that were meant to empower whites only, and have to a large extent contributed towards the imbalances and inequality within South African society today, hence affirmative action was introduced to deal with the imbalances created by these laws:

- The Wage Act 27 of 1925, the Wage Act 44 of 1937 subsequently the Wage Act 45 of 1957 increased wages for whites. The salaries of blacks in government institutions were kept lower than their white colleagues.
- The Mines and Work Act 25 of 1926, reserved certain jobs for whites only. Certain positions were reserved for white people in local government and in the mines.
- The Apprentice Act 37 of 1944 gave control of entry to the trades to unions that were taking care of the needs of the whites. Black people in local government were denied the right to join trade unions.
- The Native Building Workers Act 27 of 1951 prohibited Blacks from doing skills construction in the white urban areas. Black people were not afforded the opportunity to train for certain skills, as a result they could not fill certain positions in government institutions.
- The Asiatic Land Tenure and Representation Act 28 of 1946 restricted Indian trading in the Transvaal. This Act prohibited Asians from owning or occupying

property without a permit when such property had not been owned or occupied by Asians before 1946.

- The Vagrancy Act 23 of 1879, the Glen Grey Act 25 of 1894, and the Native Regulation 1013 of 1911 were directed at discriminating against blacks and also forcing them off the urban areas to the farms and mining compounds (Masiloane, 2001:22).

Apartheid brought about different discriminatory forms of legislations such as the Group Areas Act 41 of 1950 which forced certain races to live in designated areas, the Bantu Education Act 47 of 1953 and the Coloured and Indian Education Department that controlled all aspects of education for blacks, coloureds and the Asiatic races respectively. The Job Reservation Act prescribed what job categories were open for blacks, coloured and Indians, but at the same time all three races were denied the right to vote and all political movements were banned (Sithole, 2001:11).

After the release of the political prisoners in 1990, during intensive negotiations a transitional government known as Government of National Unity was formed, which culminated in the first democratic elections in 1994. Most of the decision-making posts and skilled occupational categories in the public sector were occupied by white males hence affirmative action was vital to bring transformation in the sector. (Rakate, 2006:2).

It is against this background that it became highly imperative that affirmative action, the Employment Equity Act and other legislation be introduced, not only to serve as a deterrent but as a human right, striving towards equality for all the people of South Africa. The word affirmative action has to be clearly defined to ensure that its meaning is understood by those who implement it and those who are supposed to benefit from it. A number of definitions have been identified from various authors and will be elaborated upon in the next paragraph.

## **2.2.2 Literature study and definitions of affirmative action**

Researchers and authors use different wording to define affirmative action, interchangeably, depending on their unique research and experiences. It is expected of

the researcher to come up with a suitable definition for affirmative action in order to achieve the purpose of the study. The following definitions of affirmative action were identified:

- Affirmative action is a temporary intervention designed to achieve equal employment opportunity without lowering standards and without unduly trammelling the career aspirations or expectations of current organisational members who are competent in their jobs (Human, 1993:2). This simply confirms that affirmative action does not encourage appointment of unskilled and unqualified individuals.
- “Affirmative action is a process that solely concentrates on the employment, development and promotion of the disadvantaged group. It could demand legislation for a quota employment system and setting timetables for achievement of quotas” (Wingrove, 1995:5). However a quota employment system is not encouraged, since it concentrates on numbers only and not competence.
- Affirmative Action is the results of a set of policies or practices that have the purpose of working against inequalities that have come about on social, economic and educational spheres because of unfair discrimination against certain groups of people (Barker, 2007:247). Government’s commitment is necessary to ensure effective implementation of affirmative action.
- Affirmative action is a proactive, conscious effort to redress disadvantages of the past and to increase representation of marginalised groups of the population in leadership positions in society (Wingrove, 1995:6). It is through affirmative action programmes that marginalised groups could be prepared for top positions.
- Affirmative action can be described as a systematic, planned process whereby the effects of colonialism and racial discrimination are being reversed in all areas of life (Quanta 1995:1). Though we cannot undo the past, through affirmative action, the apartheid tendencies can be addressed.

- Affirmative action is not meant to change the past, but aims at dismantling previous patterns of employment discrimination and preventing discrimination, from either whites and blacks in future. It is, however, important to note that the beneficiaries of affirmative action need not show that they were victims of discrimination. Dudley, (in *Dudley v. City of Cape Town & another* 2004 5 BLLR 423) states that affirmative action was, for example, necessary to repeal laws such as the Group Areas Act 41 of 1950 which forced different races to live in designated areas.

For the purpose of this study, among other definitions, affirmative action will be defined as a temporary, systematic, planned intervention which is intended to achieve collective equal employment opportunities through a proactive and conscious effort to place and develop competent or potential candidates in positions from which they were denied access in the past, with the sole purpose of rendering the workforce more representative within the population it serves.

South Africa today emerges from an apartheid local government system that was structured to divide citizens socially, economically, spatially and racially to ensure that only a small minority of South Africans benefit from development. However since 1994, with the democratisation of our country, local government authorities have undergone a number of transformation processes, among others, the implementation of affirmative action.

The term 'black people' or 'blacks' refers to all people who were politically excluded from a meaningful role within the South African society for the reason that they were not white. White women also form part of the disadvantaged group because they were also denied employment opportunities during the apartheid era. Affirmative action is closely related to equal employment which implies equal access for all people, to participation in the employment process and advancement on the basis of merit, ability and potential (Luhabe 1993:26). Affirmative action has to be tailored according to the needs of an institution.

## **2.3 SOUTH AFRICAN LEGISLATION PERTAINING TO AFFIRMATIVE ACTION**

After the first democratic elections in 1994, the new government passed laws and policies that were intended to deal with the experiences of inequality and discrimination among the people of South Africa. Section 9 of the Constitution states that everyone is equal before the law. The formation of the multi party government protracted the negotiations process which ultimately led to the establishment of the new constitution of the Republic of South Africa in 1996. The election of the democratic government, paved a way towards the emancipation of the black people in South Africa. The democratic government introduced among others, the following policies as guidelines to deal with the process of affirmative action, which will be discussed in this chapter.

- The Constitution of the Republic of South Africa, 1996.
- The Reconstruction and Development Programme (RDP).
- The Employment Equity Act 55 of 1998.
- The Broad Based Economic Empowerment Act 53 of 2003.
- The Skills Development Act 97 of 1998.
- The Development Levies Act 9 of 1998.

### **2.3.1 Constitution of the Republic of South Africa, 1996**

The Constitution of the Republic of South Africa, 1996 which came as a result of a multi party negotiation process is regarded as the supreme law of the country. The Bill of Rights, sections 7 to 39 of the Constitution is the cornerstone of democracy in South Africa, as it enshrines the rights of the people in our country and affirms the democratic values of human dignity, equality and freedom. Section 8 of the Bill of Rights declares that it applies to all law, and binds the legislature, executive, judiciary and all organs of state. The Bill of Rights is thus not discriminative to any individual due to his/her colour, religion, race, gender or age. All citizens of South Africa are equal before the law.

Section 9 of the Constitution refers to everyone as equal before the law and everyone has the right to equal protection and benefit of the law. Unlike the old South African Constitution, where the whites were regarded as superior to other races, and protection by law was not equal across racial line. During the apartheid era the then constitution partially covered some of the above rights depending on race. Blacks did not have basic human rights. Sections 9(3) and 9(5) confers that even the state may not unfairly discriminate directly or indirectly against anyone on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, belief, culture, language or birth. Any kind of discrimination is unfair if it is not justified by law.

Sections 17 and 18 subscribe to freedom of assembly, demonstration, picket and petition and freedom of association regardless of the colour of their skin or gender. Blacks were not allowed to be actively involved in trade unions to express their feelings and opinions with the employer. The employees were barred from participating freely in union and political activities. The Constitution creates opportunities for employees to participate in trade union activities, but it is also expected of the citizens to adhere to the main principles and limitations as prescribed in section 36(1).

The purpose of affirmative action is to correct the wrongs of the past by bringing a balance of representation in the workplace. It is for this reason that the researcher disagrees with those who believe that affirmative action discriminates against white males, whereas there still are serious misrepresentation of workers in terms of numbers of blacks, whites, disabled workers in general and women in particular, within public and private sectors. Those who have been appointed in positions should be trained to develop their skills. If government institutions, as the main employer, together with employers in the private sector, are unable to manage and monitor the appointment processes, the whole purpose of affirmative action will not be effective. Ineffective implementation of affirmative action occurs when the personnel composition has a negative image and management believes that a few black faces at the right levels will make the organisation appear practically correct (Thomas, 1996:6). Affirmative action is part of the Reconstruction and Development Programme whose purpose is to uplift the



image of the previously disadvantaged groups that was overshadowed by the laws of apartheid.

### **2.3.2 Reconstruction and Development Programme of 1994**

The Reconstruction and Development Programme (RDP) can be defined as a plan to address social and economic problems facing South Africa, such as violence, lack of housing, lack of jobs, inadequate education and health care, lack of democracy and a failing economy (African National Congress, 1994a:1). The RDP and affirmative action jointly address the inequality of the past by creating better opportunities for disadvantaged groups.

The RDP acknowledges that the majority of the people of South Africa are still living under impoverished conditions. In the early 1990's the local government was undemocratic and serviced according to racial groupings, such as blacks, Indians, coloured townships and white suburbs. To overcome the above disparities, government established an integrated, coherent socio-economic policy framework that will ensure that the country's resources are used effectively for the benefit of all the citizens of South Africa, regardless of race, gender or religion (African National Congress, 1994a:3).

The RDP is a South African socio-economic policy framework implemented by the African National Congress (ANC) government which came into power in 1994. The programme was implemented after months of discussions, consultations and negotiations between the African National Congress, its Alliance Partners, the Congress of South African Trade Unions and the South African Communist Party, and mass organisations in the wider civil society. In the history of South African government such consultation involving all stakeholders within the communities was unusual and could only confirm the type of governance that the ANC intended to introduce. The ANC's main aim in developing and implementing the RDP was to address the immense socio-economic problems brought about by the consequences of the struggle against its predecessors under the apartheid regime (Sithole 2001:11).

By the early 1990's white males, for example, were heavily over-represented in the key decision-making posts and in the skilled occupational categories in both public and private sectors (Human, 1993:81).

Affirmative action, the RDP, and Black Economic Empowerment (BEE), should not be viewed as reverse discrimination, but a means to correct the mistakes and the imbalances of the past, created by the apartheid government. It is important to acknowledge that some of the policies and legislations enacted by the previous government, were discriminatory and should be replaced. Thus policies that are in place and those that are still to be formulated should bring about change in organisational behaviour, resulting in improved service delivery (Rakate, 2006:41).

The Reconstruction and Development Programme was needed to address the following:

- (i) Towns and cities were divided. Most whites lived in fully developed suburbs while most blacks lived in poorly developed townships and shack settlements.
- (ii) Rural areas were divided. There were well developed white commercial farming areas and impoverished bantustans.
- (iii) There was a great inequality in schools, health, welfare, transport, housing and employment. Some people had plenty while others had absolutely nothing. South Africa is one of the most unequal countries in the world (ANC, 1994b:2).
- (iv) The economy benefited a minority and very large white dominated companies controlled most of it.
- (v) Industries have not invested enough money in research, development and training so they are failing to meet the needs of people and are unable to survive in world markets.
- (vi) Apartheid has made sure that whites have skills while most of the workers of other races are not equipped to keep up with the great changes that are taking place in the world economy.

(vii) Small and medium sized businesses which are important in developing the economy were built on systematically enforced racial division in every sphere of our society (ANC, 1994:2).

### **2.3.3 Employment Equity Act 55 of 1998**

Affirmative action can be viewed from different perspectives, for example, education, employment, economic and political. For the purposes of this study, affirmative action will be addressed from an employment perspective. The Employment Equity Act, 55 of 1998, seeks to eliminate unfair discrimination in the workplace in order to redress the discrimination created by the apartheid government in order to enforce equality in the workplace. The objective of this study in this chapter is to offer a definition and to give an analysis of the concept of affirmative action in the Employment Equity Act in South Africa. The aim of this Act is to achieve a diverse workforce broadly representative of all the people of South Africa (Hugo, 1998:38).

The system of apartheid has left a legacy of imbalanced representation of races in the workplace. The unfair distribution of jobs in the workplace created disparities between blacks and whites, in that some of the positions were reserved for whites and blacks were not allowed to apply for those positions. As mentioned at the beginning of this chapter, some of the legislations enacted by the apartheid government were to protect the rights of the white employees. Blacks were treated differently from whites to the extent that the salaries of the whites were much higher than those of the blacks. The government had unfairly treated black people and gave white people better benefits and opportunities (Hugo, 1998:38). This is called discrimination. The implementation of the Employment Equity Act and affirmative action was meant to address such inequalities and to ensure that all races compete on the same level. In terms of Section 1 of the Employment Equity Act, 'designated groups' refer to blacks, women and people with disabilities. Black people or blacks refer to Africans, coloureds and Indians irrespective of gender and 'women' include black and white females and people with disabilities irrespective of gender and race. The Employment Equity Act proceeds to define the meaning of people with disabilities as, "people who have long term or recurring physical

or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment (Hugo, 1998:39).

The unequal distribution of jobs created a social, economic and political imbalance among the black and white communities, to the extent that blacks were not allowed or did not qualify to participate in certain activities and were not allowed to compete equally with whites in whatever way. These disparities could not be eliminated merely by scrapping discriminatory laws. The ANC led Government introduced policies, programmes and positive measures to redress the injustices of the past. Affirmative action was introduced as a vehicle to bring about balance in the past experiences (Masiloane, 2001:35).

Section 15 of the Employment Equity Act, describes affirmative action as measures to identify and eliminate barriers, including unfair discrimination, which adversely affect people from designated groups". It provides procedures that eliminate unfair selection of individuals for positions in the workplace. In other words, the Employment Equity Act is a guideline that enforces equality in the workplace (Luhabe, 1993:26).

The Employment Equity Act does not encourage employers to turn a blind eye to the requirements of the post, whenever they intend to employ a candidate from a disadvantaged group, but recommends specific procedures whenever they deal with employment needs. The requirements of the post are still to be considered without any discrimination against or excluding of people on the basis of colour, gender or disabilities (Pillay, 1998:17).

In terms of Section 20(3) of the Employment Equity Act, the requirements of a job are those that show that a person is suitably qualified for the job as a result of one of, or any combination of that person's:

- (a) formal qualifications;
- (b) prior learning;
- (c) relevant experience; or

(d) capacity to acquire, within a reasonable time, the ability to do the job.

Section 20(3) concurs with section 20(5), which states that an employer may not unfairly discriminate against a person solely on the basis of that person's lack of relevant experience when determining a suitably qualified person for a job.

To fully understand the content of section 20, the definition of a designated employer refers to an employer who employs 50 or more employees or an employer who employs fewer than 50 employees, but has an annual turnover (equal or above) that of a small business in terms of Schedule 4 of this Act. This refers to an employer who makes a total annual turnover of R5 million to R50 million.

In terms of Section 2(b), affirmative action ensures equality to designated groups in all occupations and levels in the workplace. Section 42(a)(i) explains that affirmative action is concerned with the demographic profiles of national and regional economically active people. This means that the demographic profiles of South Africa should be reflected in the workplace of the designated employer to ensure equality and equity as required by the provisions of the Employment Equity Act. Affirmative action also ensures that people who did not suffer from unfair discrimination in the past will not begin to suffer from it now. Likewise, those who belong to the designated groups do not need to prove that they have suffered discrimination. In terms of section 6(2)(a) it is not unfair discrimination to take affirmative action measures consistent with the purpose of the Act section 6(2)(b) or to distinguish, exclude or prefer any person on the basis of an inherent requirement of the job (Potts, 2000:5).

The information derived from the above paragraph, clearly indicates that affirmative action does not promote quotas and it is not all about quotas. Section 15(3), clearly indicates that affirmative action measures exclude quotas. Affirmative action does not impose any quota for representing members of designated groups in order to reflect demographic profiles in the South African workplace. However, affirmative action includes numerical goals in order to create the basis for consultation between employers, employees and trade unions. The difference between quotas and numerical goals, is that

a quota would impose a fixed number or percentage which must be attained or which cannot be exceeded, regardless of the number of potential applicants who meet the necessary qualifications whereas numerical goals have fixed objective in terms of the number of vacancies expected and the number of qualified applicants available in the relevant job (Bhoola, 2002 : 43). The three parties engage each other in order to achieve their ultimate goals, that is to create an acceptable and conducive environment for both the employer and employee. However certain barriers have to be removed to enable the process to function properly. In terms of section 19(1), the designated employer should collect and analyse data of the employment policies, practices, procedures and working environment (Bhoola, 2002 : 43).

Section 8 of the Employment Equity Act explains that employers may not test employees psychologically, any longer unless the test has been scientifically shown to be valid, reliable and unbiased. Section 7 declares that employers are debarred from testing employees medically except in specified and limited circumstances, including for the Human Immune Virus (HIV) which is prohibited, unless determined justifiable by the Labour Court in terms of Section 50(4) of the Employment Equity Act.

As the study indicates, affirmative action is not discrimination in reverse. In the above paragraphs it is indicated that blacks were deprived of opportunities in the past and are now considered for key positions and in businesses. Swanepoel, Erasmus, Van Wyk and Schenk (2000:158) clearly state that it is misleading to equate affirmative action with discrimination because the aim of discrimination is to exclude whereas the aim of affirmative action is to include. Affirmative action requires positive action to eradicate institutionalised discrimination without affecting the benefits of those who are already in positions. It is also important to mention that affirmative action does not condone unfair discrimination but declares that where discrimination is applicable, it should be applied fairly and reasonably. Affirmative action will be regarded as unfair discrimination if implemented against all odds, without regard to qualification, experience and other considerable applications from non-designated groups (Bendix 2010:593).

In terms of section 6(2)(a) of the Employment Equity Act, it is not unfair for the employer to discriminate against certain groups of people for the purpose of advancing members of designated groups. It is true that affirmative action discriminates, but in a fair manner. In order to transform the workplace and the workforce, the Government decided to repeal some discriminatory laws and certain Acts of Parliament with the aim of eliminating unfair discrimination. South Africa's major employment relations problems during the period 1948 -1979 were created by the promulgation of the Black Labour Relations Act 48 of 1953 and the Industrial Conciliation Act 28 of 1956 (Nel, Kirsten, Swanepoel, Erasmus and Poisat 2008:84).

#### **2.3.4 Broad Based Black Economic Empowerment Act 53 of 2003**

The main aim of the Broad-Based Black Economic Empowerment (BBBEE) Act is to address the inequalities resulting from systematic exclusion of the majority of South Africans from meaningful participation in the economy (pre-1994) and owning of big businesses, and thwarted attempts by black entrepreneurs to do so. BBBEE was introduced in response to criticisms against Narrow Based Black Economic Empowerment, that it led to enrichment of a few black individuals whereas the goal of Broad-Based Empowerment is to distribute wealth across broad spectrum of South African society. In this context the role of affirmative action is described as an acceleration of employment and promotion opportunities to disadvantaged groups to ensure equitable representation at all occupational categories (Peverett,1994:01).

The government's aim with BBBEE was to introduce an integrated and coherent socio-economic process that contributes directly to the economic transformation of South Africa and brings about significant increases in the number of blacks who can manage, own and control the country's economy, as well as bringing a significant decrease in income inequalities. On the other hand affirmative action and BBBEE would be futile if their only aim is to compensate for the wrongs of the past (Nkuhlu 1993:12).

#### **2.3.4.1 Rationale behind the Broad Based Black Economic Empowerment Act 53 of 2003**

Black South Africans have an inclination for business in South Africa. However, due to lack of government support and tough legislation imposed against people of colour, black businesses were poorly developed while their white counterparts' businesses flourished. Laws and regulations increasingly forced black South Africans out of proprietorship of businesses. Cecil John Rhodes as Prime Minister of the Cape Colony pushed through legislation that destroyed the basis of black commercial farming in the Eastern Cape. Historians believe that his main motivation was to weaken blacks economically so that they would be forced to work on his diamond and gold mines, which were short of cheap labour (The Native Black Urban Areas Act 21 of 1923; The Group Areas Act 41 of 1950).

The Black Land Act 27 of 1913 banned blacks from owning land outside areas set aside for them, which eventually amounted to less than 14% of the land area of South Africa. Almost all the 14% was restricted to communal ownership, further inhibiting the development of black commercial farmers. Many black farmers managed to operate for years as share croppers or tenant labourers, but were gradually squeezed out as the whites became more wealthy and powerful. White mining companies benefited through access to migrant workers whose work options narrowed dramatically, while white farmers gained through their virtual racial monopoly of commercial farming, and through cheap labour (Masiloane, 2001: 23).

Black traders and manufacturers were not restricted by general statute before 1923, which did not prevent local governments from hindering their development. However black traders could never doubt that their right to trade, like their right to residence, was limited by the perceived interests of whites (Masiloane, 2001:24).

The Native Black Urban Areas Act 21 of 1923 confined Black South African residents in urban areas to Native locations and undermined their rights to permanence. It also specified that urban local authorities could allow black traders to operate in the black rural villages and urban locations (Masiloane, 2001: 23).



The situation became worse after the National Party (NP) came to power in 1948 under the apartheid government. Life became difficult for Indian and coloured entrepreneurs who were also governed under the Group Areas Act 41 of 1950, which removed their right to own or run businesses outside of their own group areas. This was the first national legal assault on the commercial rights of coloureds although Indians had already suffered statutory economic discrimination.

In 1955 the whites only government explicitly excluded black traders from operating outside of the African reserves and locations, while those with businesses already in white areas (86% of the country) were warned to look for alternative sites for their businesses in the locations. Two years later, even black entrepreneurs in black locations, or reserves had to seek permission to run a business from the local Native Administrator. The Business Chamber complained that blacks were allowed to have trading licenses in the locations or Black townships (Bantu Building Workers Act 27 of 1951).

In 1963 the Minister of Native Affairs, Dr. Hendrik Verwoerd issued circular No. 543 to local authorities to inform blacks as follows:

- Firstly, that blacks can assume no right to trade in the urban areas even Black locations or anywhere else in the urban areas.
- Secondly, blacks cannot own commercial property in the locations or anywhere else in the urban areas.
- Thirdly, each entrepreneur is allowed to run only one business and no branches thereof.
- Fourthly, the only businesses permitted were those confined to provision of the daily necessities of the "Bantu" which excluded dry cleaners, garages and petrol filling stations, let alone banks or factories.

The restriction assumed that blacks should not own or operate motor vehicles, or wear dry-cleaned clothes, or if they did, it should be known that these were not necessitated for the Bantu, which has promoted white businesses.

In 1968 the restrictions were tightened further to ensure that black business people did not have more than one physical business outlet, to stop them from expanding their business premises and to ban them from selling or delivering goods to non-black people who lived outside the urban bantu residential area. Browning (1989:20) defines BEE as the process of dismantling apartheid and creating a non-racial representative government, which will deal mainly the past experiences of racism (Browning, 1989 : 20).

After the end of apartheid in 1994 with the advent of majority rule, control of big businesses in both the public and private sectors still rested primarily in the hands of white individuals. According to Statistics South Africa, whites only comprised 10% of the population, meaning that most of the country's economy was controlled by a very small minority. BBBEE is intended to transform the economy to be representative of the demographic make up of the country without destroying the economy (Mid-year population estimates 2010:9).

The most unfair, damaging and establishing feature of the South African economy, is that a very small proportion of skilled professionals and proprietors are black. Blacks were not allowed to fulfil their personal potential, unlike most whites. From the above statements, it is clear that the racial imbalances were condoned and legislated by government to create a line of inferiority among blacks. The introduction of BEE is more than bringing racial equality to the economy and reducing the dominance of monopolies and oligopolies and growing small business in South Africa, it is about more than ownership of the economy, it is about skills, management and income (Makhunga, 2008:9).

BBBEE is intended to boost the previously disadvantaged people, because they were denied opportunities to participate freely in the economic development of South Africa. The Government had fully afforded and supported the whites of this country all the rights to participate in business unlike blacks. Black entrepreneurs were harassed systematically by the apartheid government, while at the same time giant white-owned corporations emerged that exhibited the blacks as being weak in business and presented their failures though they were weakened by the laws and regulations. Black

empowerment has been a consistent theme in the ANC's policy since the adoption of the Freedom Charter (Wooley, 2005:21).

One of the most significant BBBEE exercises began in 1993, when Sanlam, the giant Afrikaans insurance-based conglomerate, transferred 85% control of Metropolitan Life to black shareholders. The Independent Development Corporation (IDC) was one of the first finance companies to support larger kind of empowerment projects. It assisted in the transfer of ownership of privatised or unbundled companies into black ownership. The various ways of participation included: warehousing shares, financing the transfer of ownership, or taking a minority shareholding in a firm being transferred to black owners. IDC became involved in BEE in the early nineties. Its main involvement was to support the establishment of some small and medium black businesses, even though they were outside of the IDC's usual field of industrial development (Klein, 2000:3 <http://www.sanlam.co.za/wps/connect/sanlam/our+>).

Sanlam had supported BEE in exercising its authority in response to pressures for stock market value. Sanlam sold a controlling share of Metlife to Dr. Motlana's new company, New African Investments Limited, or NAIL, with the help of finance from the IDC. A year later NAIL was floated in the Johannesburg Stock Exchange and it grew rapidly. Dr. Motlana and his (non-black) partner Jonty Sandler were joined by Advocate Dikgang Moseneke, who had been Deputy of the Pan Africanist Congress (PAC) pre-1994 negotiations. Moseneke decided to leave politics before the 1994 elections together with Mr. Cyril Ramaphosa, former Secretary of the ANC, lawyer and former leader of the Black National Union of Mineworkers (NUM). The last executive member on board was Zwelakhe Sisulu. NAIL has become one of the largest black-owned publicly traded companies. NAIL symbolises the rapid accumulation of wealth that several black controlled companies enjoyed after 1994 (Klein, 2000:9).

In 1997 the Black Management Forum, proposed the establishment of a Black Economic Commission. The motivation for the establishment of the Commission was that the notion of true empowerment as defined by blacks does not exist, nor does a common definition or benchmark (BEECom 2001:4). There were no accepted standards or criteria

for empowerment. Organisations were making it up as they went along, which created ideal conditions for all kinds of opportunism, which derailed the whole purpose of BEE. Three and half years after extensive discussions with politicians, the Black Economic Empowerment Committee (BEECom) adopted a broad based approach to BEE, that included training, small business development, economic growth, and access to financial services, in addition to the issues of ownership and procurement. President Mbeki once said that the task of BEECom was to answer the question, how do we promote the formation of a black bourgeoisie which will itself be committed and contribute to black economic empowerment. Arguments in support of government actions to promote a black business class are many and varied. It is politically dangerous to rely on people drawn from a single race group to form, control and lead companies. To succeed economically and grow the economy further, the country must clearly harness the energies of as many people as possible from across the racial divide (Ramaphosa, Innes, Nzimande, Sachs, Luhabe, Maseko, Zilwa, Mbeki, Ndlovu, Mafuna, Macozoma, Lucas-Bull, Katz, M. Machabane, Peires, Fakude, Lester and Jack (2007:247).

#### **2.3.4.2 Objectives of the Broad Based Black Economic Empowerment Act (BBBEE) 53 of 2003**

The objectives of the Act are to facilitate Broad Based BEE by:

- promoting economic transformation in order to enable blacks to participate meaningfully in the economy. It is appropriate and fair that where economic disempowerment has been imposed due to race, that the race be taken into account when introducing measures, such as affirmative action to correct the imbalances (Sachs 2007:17).
- achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises. Since blacks were previously denied an opportunity to occupy and learn certain skills the imbalances should be corrected through affirmative action.

- increasing the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills.
- training; is needed for newly appointed officials as part of empowerment.
- increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training. There is an emphasis that affirmative action focuses on hiring, training and promoting the disadvantaged group in an organisation (Mathis & Jackson, 2003:3).
- promoting investment programmes that lead to broad based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity.
- empowering rural and local communities by enabling them to have access to economic activities, land, infrastructure, ownership and skills; and
- promoting access to finance for BEE.

The Broad Based Black Economic Act 53 of 2003 was signed on 7 January 2004 by the President of the Republic of South Africa. The preamble to the Act specifies that it is a legislative framework established for the promotion of BEE. The framework has been established to empower the Minister of Trade and Industry to issue Codes of Good Practice and to publish Transformation Charters and Sector Codes.

## **2.4 IS AFFIRMATIVE ACTION DISCRIMINATION IN REVERSE OR NOT?**

Discrimination is a sociological term referring to the treatment towards or against a person of a certain group in consideration of a class or category. Discrimination is the actual behaviour towards another group. It involves excluding or restricting members of one group from opportunities that are available to other groups. (Tinarelli 2000:19)

Affirmative action is a corrective tool which is used to correct the wrongs of the past. It is not intended to unfairly discriminate or suppress anybody, but its intention is to ensure that all people are treated as equals in terms of the South African Constitution. Affirmative action is not discrimination in reverse but a strategy which is necessary in order to achieve restitution for past discrimination by combating racism and maintain equitable distribution of public service and job opportunities (Bayat & Meyer, 1994:283).

#### **2.4.1 Discrimination for affirmative action purposes**

Legislatively not all discrimination is regarded as unfair.

The Employment Equity Act states that it is not unfair to discriminate where reasons for discrimination are affirmative action and the protection and advancement of persons from previously disadvantaged groups (Tinarelli, 2000:7).

An employer is therefore entitled to discriminate when appointing and promoting persons from previously disadvantaged groups without it being deemed as unfair as long as it is consistent with the purpose of the Act. The employer may treat an employee or applicant on a preferential basis (Tinarelli, 2000:20).

The word 'discrimination' is not always as evil as many people perceive it to be however, discrimination can either be good if it is used for the right purpose or bad if it is used for the wrong purpose. Affirmative action should be fair, transparent and open for criticism by those who are perceived to have been discriminated against. The present Government endorsed its fairness and transparency by empowering the citizens of South Africa to challenge any decision which may be perceived to be discriminative in the courts of law.

It is clear from the above explanation, that Government planned to implement equality among the people of South Africa by introducing legislation that empowers those who were previously discriminated against, due to race, gender, creed and nationality. It was in the best interests of South Africa to have a democratic government which sought to promote equality and dismantle discrimination without claiming individual restitution against those who enjoyed the benefits of apartheid for a long time. On the other side

many young white graduates feel marginalised as a result, and feel that they have no future in the workplace (Hermann 2000:10).

However, Bendix (2010:593) states that affirmative action will only become unfair and discriminatory if a previously disadvantaged person is appointed at all costs and without allowing other persons being given the opportunity to compete.

The Employment Equity Act does not legislate against discrimination but merely against unfair discrimination (Tinarelli 2000:19). Affirmative action is not discrimination in reverse, but a corrective measure adopted by Government to rectify the anomalies of the past, by giving preference to the designated groups, who were previously forbidden to benefit from the resources of this country. However, affirmative action should be fair and transparent to all stakeholders. This subject will be discussed in more detail in the next chapter.

## **2.5 CONCLUSION**

This chapter provides the historical background of the former South African policies and how affirmative action impacted the lives of the people through Government's policies and legislation, namely the Constitution of the Republic of South Africa 1996 which is the supreme law of the country, the Reconstruction and Development Programme of 1994, aimed at improving people's lives, the Employment Equity Act 55 of 1998, intended to ensure equity along racial and gender lines, the Broad-Based Economic Empowerment Act 53 of 2003, which is intended to empower disadvantaged groups. The study relates a close correlation between the above-mentioned legislations and affirmative action.

Chapter three of this dissertation focuses on the guidelines for the implementation of affirmative action in local government in Gauteng.

## **CHAPTER 3**

### **GUIDELINES FOR THE IMPLEMENTATION OF THE POLICY OF AFFIRMATIVE ACTION WITHIN LOCAL GOVERNMENT IN GAUTENG**

#### **3.1 INTRODUCTION**

The previous chapter provides an overview of the transformation process in the local government and how it relates to affirmative action. This chapter will deal with factors that impose limitations on affirmative action, the list of arguments for and against affirmative action, the requirements for successful implementation of affirmative action and how the introduction of the Local Government Systems Amendment Act impacted on the current municipal systems and strategies.

#### **3.2 LIMITATIONS TOWARDS EFFECTIVE IMPLEMENTATION OF AFFRIMATIVE ACTION**

Affirmative action has been practised in a number of countries, in some with greater success than others, where no positive results were shown. Since South Africa is not the first country to implement affirmative action, it may learn from the successes and failures experienced by other countries that have implemented affirmative action before them. Malaysian affirmative action has been regarded as the most extensive affirmative action programme and one of the most successful (Emsley, 1996:7).

Malaysia can be closely compared to South Africa in the sense that statutory affirmative action policies were adopted in favour of Malays who constitute the majority of that country rather than protect the minority as was done in other countries such as the United States of America. The requirements for the successful implementation of affirmative action were identified by the Malaysian Government as the setting of quotas, time-scales, training and development. South Africa has also taken some of these factors into consideration in the formulation of its policies. However from the examination



of the previous researchers in the public service in general, it became evident that there were serious limitations to effective implementation of affirmative action policy in the public sector including municipalities which were discussed as follows:

### **3.2.1 Lack of knowledge of affirmative action policy**

According to Pienaar (2009:101) many black employees in the public sector including municipalities, especially those who are in lower positions are not aware of the existence of the policy of affirmative action. A high percentage of those who are aware of affirmative action have not seen affirmative action in practice. However many white officials in the public sector confirmed their knowledge of the affirmative action policy. Thus, those who were supposed to benefit from affirmative action are not aware of this policy, while the whites who are not beneficiaries of affirmative action are aware of the policy.

The views of Human (1993:12) who stipulates that successful implementation of affirmative action requires the involvement of staff in the formulation of such a policy, are of importance. It is obvious that some of the municipalities overlook this factor because many members in lower positions have not been informed about the existence of affirmative action. Therefore, in order to achieve any success in implementing affirmative action strategies, it is imperative that municipalities engage in broad consultations within all levels of the organisation in order to sell the concept of affirmative action to their employees. It should also be clear that affirmative action is not meant for people on a certain level only, but for all employees. All fears and expectations must be discussed, whether they are reasonable or unreasonable, favourable or unfavourable. Many members resist affirmative action simply because they were never given a fair chance to attend workshops where the subject was dealt with openly and questions asked and answered satisfactorily.

### **3.2.2 Lack of people development**

According to Motumi (2000:78) many black employees especially the former disadvantaged groups and communities, do not know about the Human Resource Policy, that is intended to develop the workers. A large number of white people confirm their awareness of the policy. Human (1993:12) emphasises the importance of people development and argues that the responsibility for development does not only lie with the human resource department but with every line manager. All line managers must ensure that their employees are equipped and developed to do their work effectively and efficiently.

The implementation of affirmative action cannot be successful if people are not adequately empowered. If the managers are not qualified for their positions it will be difficult for them to take full responsibility in ensuring that their subordinates are well trained and empowered. It was also indicated in Chapter 3 of this research that some of the Municipal Managers and top officials did not have the required qualifications. As a result, training their subordinates who are better qualified than them, will be viewed as the end to their careers. To deal with this problem, it is recommended that municipalities should conduct a skills audit, where all the loopholes can be identified and addressed accordingly.

### **3.2.3 Lack of timescales**

Some of the black employees are still of the opinion that timescales have not been stipulated for the implementation of affirmative action because whites are still in power especially economically. However, white respondents indicated that they feel uncomfortable about the fact that timeframes have not been specified with regards to the implementation of affirmative action. Nesh (2003:28), Rampersad (2000:61) and Taole (1997:45) state that the purpose of affirmative action is to uplift the previously disadvantaged and put them on an equal footing with those who oppressed them. They

further purport that after a reasonable period of time, affirmative action will have to end and be replaced by the principle of equal opportunity. The South African government's policy on affirmative action has not given time frames either. The ANC led government has stipulated that within five years of the new democratic dispensation 1994-1999, 50% of senior managers must be black and 30% women. The fact that affirmative action does not have a sunset clause discourages most white professionals because they feel that their qualifications are sacrificed while blacks are advanced within their careers.

#### **3.2.4 Lack of gender equality**

There is a strong perception from blacks that implementation of the affirmative action policy is not done on the basis of race. Many women have indicated that they do not feel gender is strongly considered in the application of the affirmative action policy. Whereas among the workers and interested parties there is a strong feeling that disability should be considered as a criterion in the implementation of this policy and that is not happening at the moment. The national, provincial and local governments had great success in this area of gender equality. Although it is not visible in the opposition parties, the ANC has set a good example as a ruling party by ensuring that they have 50% representation of women in their political structures (Booyens & Masterson, 2009:15).

#### **3.2.5 Lack of monitoring mechanisms**

It was also learnt from previous studies that there is a lack of monitoring mechanisms which translates to poor performance of the municipalities and the personnel especially section 56 (managers directly accountable to the municipal manager) and 57 (a person who is appointed as a municipal manager) employees who are subject to a 5 year performance contract. In smaller municipalities there is an indication of a lack of commitment from the top management to deal with the implementation of affirmative action within municipalities. Human (1993:8) states that a committee composed of employer, employee and union representatives should continuously monitor, evaluate

and refine the affirmative action strategy. Human further recommends that constant monitoring should be done on the number of blacks and women provided with promotion opportunities.

### **3.2.6 Lack of organisational transformation**

Thomas (1996:8) purports that organisations should not introduce affirmative action in isolation to organisational environments where managers believe that a few black or female faces will make the organisation appear to look politically correct. Thomas recommends that organisations should conduct programmes aimed at dealing with differences, valuing them and appreciating diversity because this will prevent people from undermining one another, but instead will encourage people from various cultures to work together in harmony. Whenever the organisation recruits people from the designated groups, it should not be done because the organisation is under pressure, instead it should be done with a clear understanding that the implementation of affirmative action is a necessity to bring a racial and gender balance within the working environment.

Organisations which are not transformed from the old practices of the apartheid regime will obviously work against the implementation of affirmative action. The apartheid government enforced racial supremacy within the local government sphere by ensuring that only white officials were appointed in key positions and blacks were employed merely in clerical positions and also to do any other unprofessional work. In the new political dispensation, which replaced the apartheid regime, the struggle within the municipalities is no longer about racial supremacy, however, it is about political appointments. The ruling party appoints those officials who are affiliated to their party and that is why some municipalities are unable to deliver because sometimes they appoint unqualified and inexperienced officials in key positions within their organisations. (Department of Provincial and Local Government, 2005:2).

### 3.3 ARGUMENTS FOR AND AGAINST AFFIRMATIVE ACTION

The controversy surrounding affirmative action is directly related to public perceptions or misperceptions of the policy, coupled with its unequivocal nature. Lack of specific guidelines for the execution of the policy has led to variations in actual practice. This lack of conformity lends itself to the ideological clashes regarding the nature of affirmative action and practical ones concerning its implementation. Points of contention and arguments (both for and against) include the following:

- Critics of affirmative action claim that the policy divides society along lines of race, ethnicity, gender and nationality by creating groups whose membership is determined by their ethnicity, gender and nationality. It is empirically argued that affirmative action provokes racial tension due to raising race consciousness (Fish, 2000:79-81) The programme can, however, not simply be eliminated because it makes people aware of racial conflicts. It is impossible to design a programme that will eliminate race and gender inequality without making people conscious of their racial identity. Discrimination and racial and gender segregation existed even prior to the introduction of the affirmative action programme, and the elimination of such programme would not guarantee the end of racial hostility and discriminatory practices (Bergman, 1996:121). Supporters argue that labels serve to place achievement in the context of cultural strengths or obstacles and that minority status is a framework for the interpretation or determination of what constitutes achievement (Butler, 1995:74).
- Critics argue that affirmative action is destructive to the beneficiaries and also sends a message that they are 'not capable enough to be considered on their own merits' (Strauss, 1995:43). Supporters argue that the affirmative action program is effective in increasing diversity within institutions and organisations and the compensatory nature outweighs such imperfections (Green, 1976:413).
- Opponents maintain that the policy is contradictory in that it requires the

establishment of goals to incorporate the former disadvantaged groups in all levels of government and private sectors, but the actual selection decision should be made on a non-discriminatory basis. The proponents of affirmative action always point out that the issue of quotas is not a determining factor of affirmative action, but the trend has proven that affirmative action is all about quotas and quantities and not quality as such. Proponents of affirmative action argue that a quantifiable and dynamic system of measuring progress is thus the most effective method of enacting affirmative action policies (Green, 1976:421).

- The opponents of affirmative action declare that affirmative action violates our societal values of individualism and merit in that it reduces the level of humanity and achievements of individuals. People with more liberal views tend to argue that the individual is the singular unit of society and that our society is designed to allow each individual to fulfil his/her own desires. Their argument is that affirmative action eliminates this concept of individuality by placing people in different groups according to characteristics such as race or gender. Those arguing in favour of affirmative action claim that sex and race are often taken into account, whether affirmative action exists or not. Based on empirical evidence, individuals of a race or gender that is discriminated against are judged based on those characteristics before considering their merit or qualification for the job (Butler, 1995:3).

### **3.4 REQUIREMENTS FOR SUCCESSFUL IMPLEMENTATION OF AFFIRMATIVE ACTION**

The direct requirements for successful implementation of affirmative action programmes refer to aspects or conditions, that are directly linked to the implementation of affirmative action policies (Emsley, 1996:10). Many authors have identified such requirements based on past experiences in various countries. Those requirements are discussed below.

### **3.4.1 Quotas**

In the South African context, many researchers equate quotas with numerical goals in the implementation of affirmative action with the view that one cannot gauge the success of that which cannot be measured (Madi, 1993:16). However, the Malaysians did not consider the introduction of quotas as the main important element in meeting affirmative action goals. The Malaysians were under the impression that once they introduced quotas it would be difficult to remove the system again, and would have undesirable effects such as reducing efficiency and would also create dependency and foster resentment (Emsley,1996:7). The quota system should not be implemented in isolation. Where the quota system is implemented, the issue of qualifications and experience should be brought to the fore. The quota system is not encouraged in South Africa, bearing in mind that when quota replaces merit, everyone suffers so is the economy.

### **3.4.2 Timescales**

A further lesson to be learnt from experiences of affirmative action policies is that a specific timeframe should be set for the duration of the affirmative action policy. For example the Malaysian affirmative action programme stretched over 20 years. There was consensus that in Malaysia affirmative action would last from 1970 to 1990 (Emsley, 1996:7) A sunset clause is crucial in order to allay the fears of those who will not benefit from the policy. Affirmative action is regarded as an intervention policy which is intended to correct the wrongs of the past (Human, 1993:2). It is crucial to introduce timeframes to the policy in order to achieve good results. Affirmative action must be conducted in a manner that does not lower standards and unduly trammel the career aspirations or expectation of current organisational members who are competent in their jobs (Human 1993:3). After a reasonable time affirmative action should fall away and be replaced by the principle of equal opportunities. Placing inexperienced people into positions of authority will inevitably compromise professional standards and undermine the morale of both black and white personnel (Nathan,1994:142).

In South Africa affirmative action does not have a timeframe. Unfortunately those who are not benefiting from affirmative action, interpret it as a political ploy from the ruling party who are determined to continue to appoint their members in the key positions of government. It is crucial that government should reconsider its position regarding the implementation of affirmative action. Many young people are disgruntled and some are deceived into thinking that, either their education is meaningless, especially white males, or the many who think that being blacks and having the right connections means they do not need higher education to be successful. Should affirmative action not be implemented properly, future generations will be without proper education and training and depended on political favours for survival (Masondo, 2012:4).

### **3.4.3 Training and development**

Top management should be committed to both implementing and monitoring people development. The development of blacks and women should be part of the general development of people within the organisation. Studies suggest that development should not only be seen in terms of providing education and training for disadvantaged groups. This is due to the fact that development depends not only on the ability of the individual, but also on motivation and context. Managers should therefore be trained in people management and be critically evaluated on their performances in relation to the development of their subordinates. Furthermore employees should be helped to understand the process of development and their responsibility for developing themselves (Human 1993:12).

### **3.4.4 Recruitment and selection**

Affirmative action should be considered as a pool of talent available for development. Affirmative action should not only end up with recruitment but should be progressive by implementing effective ways in which the personnel development within the organisation



will be encouraged. Many organisations make the mistake of viewing affirmative action as an additional policy rather than a total organisational development intervention which evaluates and often changes the way in which people are recruited, selected, trained, developed, promoted and retained (Human 1993:12).

Human (1993:12) is of the opinion that affirmative action should take place at the selection recruitment stage, and that thereafter, all employees should be developed and promoted according to workforce, succession and career plans which take backlogs into account. Selection process should not take place at the entry level of the organisation only, but at any level in the organisation to ensure that competent people are recruited and appointed in positions. A principle of internal promotion or succession planning should be adopted, whereby candidates from former disadvantaged groups will be given equal opportunity to compete for the positions. Selection criteria should be job related and not simply reflect assumptions about what is required. Selection should not be politically motivated but work related. Political appointments should be discouraged at all costs.

### **3.4.5 Organisational commitment**

It is imperative that the politicians, including managers should be committed to the organisation and the people they serve. According to Thomas (1996:8), organisations should embark on experiential programmes aimed at understanding differences, valuing differences and appreciating diversity. Thomas argues that if affirmative action is introduced in isolation to the organisational environment where management believes that a few black or female faces will make the organisation appear politically correct without making any meaningful contribution to the organisation they serve, such is merely window dressing and does not yield any positive results for the development and growth of the organisation. As was mentioned in Chapter 2 of the dissertation, affirmative action is regarded as an intervention policy designed to achieve equal opportunities, personnel development and training is also perceived as critical in ensuring that the

blacks who have been recruited are able to make a meaningful contribution to the organisation's objectives.

The fact that section 56 and 57 employees are contracted for a period of up to five years pending the renewal of their contracts as well as the councillors who are only voted in as political representatives for a term of five years, whereafter new appointments brings in new blood to the organisation can either be to the benefit or detriment of the organisation. When a well informed and qualified councillor or official is replaced by an inexperienced, unskilled councillor or official it renders the organisation ineffective. Lack of continuity within the organisation derails progress and lessens organisational commitment from those who are determined to serve the community. A positive outcome of properly implemented affirmative action programmes can only be achieved through a better and informed management of human resources (Masondo, 2012:12).

#### **3.4.6 Performance Management System**

Performance management is one of the most effective instruments being used for good governance in the public and private sectors to ensure that organisations reach their developmental objectives. Chapter 7 of the Constitution deals exclusively with the local sphere of government and lists the objectives and developmental duties of municipalities as follows:

To provide democratic and accountable government for local communities.

- To ensure the provision of services to communities in a sustainable manner;
- To promote social and economic development;
- To promote a safe and healthy environment; and
- To encourage the involvement of communities and community organisations in the matters of local government.

The municipality must strive, within its financial and administrative capacity, to achieve the objects set out above. The Municipal Structures Act, Section 19(1) states that a

municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution. Section 19(2) of the Municipal Structures Act inter alia stipulates that a municipal council must annually review:

- (a) The needs of the community;
- (b) The priorities to meet these needs;
- (c) Its process for involving the community;
- (d) Its organisational and delivery mechanisms for meeting the needs of the community; and
- (e) Its overall performance in achieving the objectives referred to in section 152 of the Constitution.

For local government to be able to manage and ensure that its developmental, objectives have been met, it must have an effective performance management system.

The White Paper on Local Government states that Integrated Development Planning (IDP), budgeting and performance management are powerful tools which can assist municipalities to develop an integrated perspective on the development in their area. Service delivery is the main concern within municipalities today. Capable managers are needed to roll out the IDP's in order to meet the needs of the communities. The saying 'what you measure you become' is appropriate because it is only in the cause of performance management that a municipality will know whether it has achieved its priorities through an integrated planning and implementation process.

Chapter 6 of the Local Government Municipal Systems Act 32 of 2000 specifically emphasises that the municipality must implement a performance management system that is in line with the priorities, objectives, indicators and targets contained in the IDP. The Act furthermore states that the performance management system must be commensurate with its resources and promote a culture of performance management among its political structures, political office bearers and councillors in its administration, and administer its affairs in an economical, effective, efficient and accountable manner.

The Municipal Finance Management Act 56 of 2003 obligates that the Service Delivery Budget Implementation Programme (SDBIP) be based on service delivery targets and performance indicators for each quarter. Alignment of the IDP is essential to reflect how well the municipality is doing in terms of the strategic operational strategies. In terms of section 67 of the Local Government Municipal Systems Act, the monitoring, measuring and evaluating of performance of staff will create a platform for development of human resources and as a result the staff will be encouraged to be accountable and efficient in the performance of their day to day responsibilities. Section 57 managers must cascade the key performance indicators (KPI) and targets of their departments downwards to all employees. The integrated performance management system should regularly conduct planning, measuring, budgeting, implementing, monitoring, assessing, reporting, evaluating and reviewing in a systematic way to ensure sustainable methods of meeting governance requirements, legislative compliance and community needs and demands.

Whenever appointments for a municipal manager and the managers reporting to the municipal manager are made, consideration should be based on effective management of the organisation, in terms of section 82 of the Municipal Structures Act. The municipal manager should have the knowledge, experience and expertise to lead and manage the municipality. Even before the organisation can think about the race or gender of the candidate, the incumbent must have the skills and qualifications which could be translated into acceptable performance within the post. The candidate should be able to translate the mission and the vision of the organisation into a workable service delivery machine.

### **3.5 LOCAL GOVERNMENT MUNICIPAL SYSTEMS AMENDMENT ACT 7 OF 2011**

The Local Government Municipal Systems Amendment Act provides a limiting scope to the ANC's policy of deploying only its members to key local government positions. The latest comments made by the Secretary-General of the ANC, Mr Gwede Mantashe, and

other leaders within the ANC, indicate they have started to realise that political appointments derail the process of affirmative action and hamper service delivery which reflects negatively on the performance of the municipalities.

The ANC reiterated that the primary aim of this Act is to restore the confidence of the majority of the people within municipalities. The Act's content include :

- People appointed to senior municipal management positions must have appropriate qualifications.
- Anyone dismissed for financial offences will not be allowed to work in any municipality for a period of 10 years.
- Senior municipal managers may not hold executive position in a political party.
- The minister responsible for local government may prohibit senior municipal executives from holding any other paid position.
- Municipal wage settlements need to be aligned with national norms and must be reported to the national government (the Local Government Municipal Systems Amendment Act, 2011).

Opposition parties welcomed the Act as it will curb cadre deployment. The Act implies that the ANC's deployment practices which had greatly hampered the success of affirmative action because only members of their party were recommended for key positions in local government despite other qualified individuals has come to an end. The other side of the coin reflects that the Democratic Alliance is adopting the same practice in those municipalities under their leadership.

### **3.6 CONCLUSION**

This chapter outlined the limitations of affirmative action and how those limitations impacted on a successful implementation of affirmative action, also related arguments for and against affirmative action were discussed as well as requirements for successful implementation of affirmative action were discussed. It was also discussed how the implementation of the Local Government Municipal Systems Amendment Act will effect

changes in the implementation of affirmative action within the sphere of local government. Chapter 4 of this dissertation will focus on the research methodology used to obtain data through the questionnaire circulated and returned from the different role-players, including the interpretation and analysis of the data.

## **CHAPTER 4**

### **RESEARCH METHODOLOGY**

#### **4.1 INTRODUCTION**

The previous chapter dealt with the guidelines for the implementation of affirmative action. The purpose of this chapter is to discuss the methodology used to investigate the research problem identified in chapter 1. Attention will be focussed on the research population and sample, data collection method (interviews) and limitation of methodology. This chapter describes the research methodology used for the study.

The aim of the study is to investigate the perception raised by the employees in the five municipalities regarding the unfair practices that have been viewed as discriminatory during implementation of affirmative action. According to Saunders, Lewis and Thornhill (2000:92), research methodology assists the researcher in deriving clear objectives from the research questions, specifying the source from which data is to be collected and considering the constraints of the study, which the researcher will inevitably have. The research question and the objectives of the study have been discussed in Chapter one.

#### **4.2 RESEARCH POPULATION AND SAMPLE**

A research population refers to individuals in the universe who possess specific characteristics that are important for the study (De Vos, 2005:193). Polit and Beck (2008:765) describe sampling as the process of selecting a portion of the population to represent the entire population, as it is impossible to study an entire population. By means of sampling a researcher selects groups of people, events, behaviour or other elements that have the same characteristics as the research population with which a study is conducted (Burns & Grove, 2005:750).

A qualitative research study was conducted. The population in this study consists of the employees between the ages of twenty one years and forty five years in the five municipalities in Gauteng Province namely, Midvaal Local Municipality, Emfuleni Local Municipality, the City of Johannesburg Metropolitan Municipality, Ekurhuleni Metropolitan Municipality and the City of Tshwane Metropolitan Municipality. The 250 questionnaires

were distributed, 50 to each municipality. The population comprised black and white males and females employees, from various levels and positions, such as executive directors, directors, managers, middle management and administrative staff. The candidates were selected randomly from the participating municipalities. Only 231 questionnaires were received back out of the 250 questionnaires distributed. The type of questionnaire used in this study is called Linkert scale.

### **4.3 DATA COLLECTION METHODS**

Data collection is a way of gathering information relevant to the study conducted (Burns & Grove, 2005:733). Information is gathered using the most precise and systematic methods. In this study the researcher selected a questionnaire as research instrument. The most common types of collection methods are interviews, observation and questionnaires (Saunders *et al*, 2000:264). Due to the disparity of the population/sample, it was not feasible to select interviews or observation as a data collecting method. The data collection method used for this study was the questionnaire, attached as annexure "A." The questionnaire is a general term that includes all techniques of data collection in which each person is asked to respond to the set of questions in a pre-determined order (Saunders *et al.*, 2000:278).

Saunders *et al.* identified two types of questionnaires:

- Interviewer administered questionnaires that include telephone and structured interviews.
- Self-administered questionnaires that include on-line and postal questionnaires.

In interviewer administered questionnaires, people who selected to be part of the sample are interviewed in person or by telephone or by a trained interviewer. In self-administered questionnaires, questionnaires are mailed, faxed, or couriered. According to Cooper & Schindler (2001:312-313), self-administered questionnaires have become ubiquitous in modern living. Service evaluations in restaurants and transport providers for instance, furnish ready examples. The researcher used a structured, self-administered questionnaire to collect data from the respondents.



The nature of the study was explained to the candidates by means of a covering letter detailing the reasons for the research and the focus area. The covering letter explained that participation is voluntary, and that confidentiality will be maintained at all times. The ethical considerations as mentioned in Chapter 1 (section 1.7.5) were adhered to during the interaction with the employees.

The questionnaires were distributed by means of an email to participations and hard copies were distributed to those who did not have emails. An arrangement was made with the Human Resources Department of the five municipalities to receive completed questionnaires from the participants. Participants were requested to submit completed questionnaires not later than 30 May 2011. The researcher collected the completed questionnaires from the Human Resources Department of every participating municipality. Anonymity was guaranteed to the participants and it was indicated that they had no obligation to participate in the study and could withdraw at anytime whenever they felt like it.

#### **4.4 RESEARCH LIMITATIONS**

In terms of the design, methods and findings, to a certain extent the study had some limitations. The first limitation it had was the possibility of biasness on the responses, since most of the respondents were from one race, blacks, with almost identical historical experience and background. Their responses may be defensive to the suggestion of affirmative action. The second limitation was based on the fact that management in other municipalities instructed some of their employees not to give any information unless it is verified by their Head of Department. Some of the officials withdrew from participating for fear of victimisation.

#### **4.5 CONCLUSION**

This Chapter covered the research population and samples, data collection methods and research limitations. The importance of selecting a reliable method of data collection was emphasised as it will determine the results of the study. The critical part of the study was how employees could give information openly and honestly, while they are aware that

their employers are keeping a close eye on what they have to say. Employees were assured that the information will be kept confidential and no one will be questioned since they have the right to remain anonymous.

Chapter 5 relates to the practical implementation of affirmative action in local government.

## **CHAPTER 5**

### **PRACTICAL IMPLEMENTATION OF AFFIRMATIVE ACTION IN LOCAL GOVERNMENT IN THE GAUTENG PROVINCE**

#### **5.1 INTRODUCTION**

Since the previous chapter dealt with the research methodology of the study, this chapter will focus on the practical implementation of affirmative action in local government. Local government as the third sphere of government, consists of various models and categories of municipalities namely, Metropolitan Municipalities, District Municipalities, Local Municipalities and Traditional Authorities. The Local Government Transitional Act 209 of 1993 was introduced to pave the way for the local government transitional process that led to a complete transformation and consolidation of former black local municipalities into a conclusive and better representative Local Government Transitional administration.

A former president of the United States of America, Mr L.B Johnson responded in favour of affirmative action as follows, “You do not wipe away the scars of centuries by saying: now, you are free to go where you want, do as you desire, and choose the leaders you please.” President Johnson stated further that “You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, you are free to compete with all the others’ and still justly believe you have been completely fair...This is the most profound stage of the battle for civil rights. We seek not just freedom but opportunity, not just legal equity but human ability, not just equality as a right and theory, but equality as a fact and as a result.” With this statement President Johnson framed the concept underlying affirmative action, asserting that civil rights laws alone are not enough to remedy discrimination (Johnson, 1965:108).

## **5.2 TRANSFORMATION OF LOCAL GOVERNMENT IN THE NEW SOUTH AFRICA AND THE ROLE OF AFFIRMATIVE ACTION**

Affirmative action should also be defined as a transformation tool which is intended to unscramble the unfairness of the past in order to bring into existence the new dawn of equality within and among people from different backgrounds, race, culture, and religion in order to form a society which is completely liberated from racial discrimination. Transformation entails the creation of a completely new paradigm because in the name of transformation everything is involved namely, all structures and systems, management styles, core competencies and worker profiles, even core output is required (Roux, 2002:419).

Prior to 1994 no single, uniform system of local government existed across South Africa. Each province had its own configuration of local government structures. Local government as an institution of governance was subservient, racist and illegitimate. The local government structures were regarded as illegitimate because they were not representative of the majority of the people of South Africa. Communities were not consulted regarding their needs, as officialdom was better able to judge their needs than themselves (Venter, 1996:42). The majority of the citizens of this country were denied the right to vote, as a result governance was imposed on them. The subservience of local governments was manifested in that they existed in terms of provincial laws and their powers and functions were dependent on the provincial government and curtailed by its laws. Apartheid government policies were replaced with new policies aimed at creating an action space to correct the imbalances of the past (Isaacs, 2003:4).

The four major racial groups (blacks, whites, coloured and Indians) in South Africa were divided not only by law but also geographically and in terms of the nature and standard of the type of municipal services. Municipalities or town councils were divided to serve communities according to their race and culture (Cloete & Makgoro, 1995:37). The so-called towns or urban residences were well serviced because only white people were allowed to stay in those areas. Those structures and systems had to be scrapped in

order to give way to a non-racial, non-sexist type of local government. In 1999 and 2000, the Human Rights Commission reported the existence of racial divisions between black and white in South Africa. Black South Africans highlighted ongoing racism by their white compatriots during the International Conference on Racism in South Africa held in Sandton in August 2000. This began the transformation process in the spheres of government (Venter, 2001:6)

This transformation process of local government took place in three phases in accordance with the Local Government Transitional Act 209 of 1993, the Constitution and the Municipal Structures Act 117 of 1998 namely:

- The pre-interim phase, 1993-1995
- The interim phase, 1995-1999
- The final phase, 1999 up to the elections of 5 December 2000.

### **5.3 MUNICIPALITIES IN GAUTENG WHERE THE STUDY WAS CONDUCTED IN RELATION TO THE IMPLEMENTATION OF AFFIRMATIVE ACTION**

Only a few municipalities were identified where the research was conducted on how affirmative action affects service delivery. This does not exclude other municipalities which were mentioned earlier in the study. The inclusion of the other municipalities was done through the questionnaire. In 1994, statistics pointed out that over 96 percent of all top positions in public service were filled by whites, who constitute only 13 percent of the total population (Tummala, 1999:503).

#### **5.3.1 Ekurhuleni Metropolitan Municipality (previously known as Eastern Gauteng Services Council)**

In 1995, after the African National Congress won the national elections, the contracts of the chairman of the Eastern Services Council and the chief executive officer (CEO) of the Council, were extended until the next municipal elections. After the 1995 municipal elections a new (chairman) mayor of the Eastern Services Council was elected. That council was formerly a white territory, with no blacks in its administration.

A coloured male from Eden Park Municipality, was appointed as Senior Administration Officer in early 1993. The second group of personnel appointed during the transformation process in November 1993 was *inter alia* the researcher, who worked for Vosloorus Town Council, was appointed as assistant records clerk until he was promoted to administration officer in 1995. Due to political pressure, the CEO, took an early retirement. The Chairman of Eastern Gauteng Services Council, (black) was appointed as the CEO, without the necessary qualifications. His education background, was only a matric certificate, no degree or diploma. His appointment had created great concern from the opposition parties and black and white professionals (Local Government survey rates, service delivery. SAPA, 2005:6).

Many municipalities, including the Ekurhuleni Metropolitan Municipality, changed their mayors and municipal managers several times, most of them due to mismanagement of finances, poor service delivery, fraud and corruption. For example, in 2009 the Ekurhuleni Metro fired their municipal manager whose contract was supposed to end in June 2011, due to the municipality's poor service delivery. In March 2009, Gauteng MEC for local government, stated that the municipal manager's contract was terminated because he had undermined the city's mayor, whereas a report from the Ekurhuleni Council pointed out that it was due to lack of service delivery, in other words he was unable to perform his duties. However, after he was declared to have failed to perform, he was given a golden handshake of R4 million. Opposition parties were opposed to the decision to pay him, but the ANC majority councillors voted in favour and the motion was passed (Staff Reporter, 2009:7). The question arises whether, in the spirit of affirmative action, the municipal manager should accept every instruction from the mayor (whether good or bad) and implement it without exercising his/her discretion, and when he/she is required to account, the mayor will not be held responsible for his/her failures. Political interference in the administration renders the municipal managers ineffective even though they are capable. The contracts of those officials are renewed by the same politicians they serve. Obviously the politicians will determine who should stay or go after the contract has expired and even before (Executive Director : Corporate Services and Executive Director : Management Services).

### **5.3.2 Midvaal Local Municipality**

Prior to the Local Government Elections of 2000, the Randvaal Town Council was operating under the auspices of the Eastern Gauteng Services Council. During the determination of boundaries, Randvaal became part of Sedibeng District Municipality, and a new council called Midvaal Local Municipality was established. The Deputy Town Secretary of Randvaal Local Municipality, which was politically led by the ANC, found himself under a newly formed municipality called Midvaal Local Municipality led by the Democratic Alliance. The Town Secretary who was the higher official in the previous council and his deputy were denied senior positions though they had the relevant qualifications and experience. To form this new municipality, the Vereeniging/Kopanong Municipality in collaboration with the Eastern Gauteng Services council seconded some of their officials to assist in the process. These officials were transferred with full benefits referred to as contractual to incumbent (CTI) employees under Section 12 Notice of the Local Government in terms of the Municipal Structures Act, of 1998. The Act guarantees that the incumbents would retain their current benefits, even though their new municipalities or structures may offer lower benefits during the placement period. A black male was appointed as Acting Municipal Manager until the elections held on 5 December 2000.

The Democratic Alliance won the municipal elections and a new municipal manager was appointed. The Acting Municipal Manager, had proven himself during his period as acting municipal manager until the elections that were declared free and fair were over. The Acting Municipal Manager who had gained experience in municipal governance since 1984, with an honours degree, studying towards a master's degree, held the positions of Executive Manager and Executive Director: Corporate Services respectively at Eastern Gauteng Services Council since 1 July 1995 until he was seconded to establish Midvaal Local Municipality in 1999, was not appointed. The newly appointed municipal manager (white) did not have the relevant tertiary qualifications. He however, had vast practical experience in local government which he accumulated during the apartheid government. He holds only a matric certificate. In spite of the calls made by

government to implement affirmative action and employment equity within the municipalities, the employment ratio between blacks and whites is still not representative of the demographics of those areas where the municipalities are based. The political supremacy dictates the pace of transformation within the municipalities (Butler 1995:18). During his term of office, the municipal manager appointed a (white) Executive Director: Corporate Services, who only holds a matric certificate and many other candidates with experience and with the relevant qualifications were turned down. Due to the lack of skills and leadership qualities, the Municipal Manager resigned to avoid embarrassment on other outstanding charges laid against him. The Executive Director: Corporate was given the option to resign with full pay before his contract expired (Department of Local Government, 2005:2).

### **5.3.3 Emfuleni Local Municipality**

Emfuleni Local Municipality is known as one of the municipalities where affirmative action made a strong effort to rebuild structures to accommodate the previously disadvantaged groups in the running of the affairs of the municipality. Emfuleni Municipality radically appointed some of their officials from the political structures without the necessary qualifications and experience which has resulted in the municipality being financially strapped, ravaged by maladministration, fraud, corruption and nepotism (Local Government survey rates, service delivery. SAPA, 2005:6).

### **5.3.4 City of Tshwane Metropolitan Municipality**

The City of Tshwane Metropolitan Municipality (hereafter called the Tshwane Metro) is one of the municipalities that had a long history of political focus with regard to changing the name to Tshwane, including the change of street names that were regarded as an abomination to blacks and that disregard the purpose of democracy. A long awaited decision on the complete change of the city's name Pretoria, to Tshwane still does not auger well for the ruling party. Opposition parties, especially the Freedom Front Plus, are of the opinion that changing the name Pretoria will be an insult to the Afrikaner nation because it is their heritage among the many that have been erased from the memory of their history (Freedom Front, 2010:12). The newly appointed Mayor of the



Tshwane Metropolitan Municipality announced the suspension of 15 of the city officials for alleged fraud and corruption which follows a forensic investigation commissioned by the acting Municipal Manager of the City of Tshwane Metropolitan Municipality, Mr. Kiba Kekana was suspended in October 2009 on charges of misconduct and maladministration which happened at the realm of affirmative action (Masondo, 2009:6).

### **5.3.5 City of Johannesburg Metropolitan Municipality**

Johannesburg is the largest city in Gauteng and Gauteng is the wealthiest province in South Africa. The city is the source of a large scale of gold and diamond trade. Johannesburg is served by O.R Tambo International Airport, the largest and busiest airport in Africa and a gateway for International air travel to and from the rest of Southern Africa. During the apartheid era, Johannesburg was divided into 11 local authorities, seven of which were white and four black or coloured. The racial groups in South Africa were divided geographically in terms of the nature and standard of the type of municipal services (Cloete & Makgoro, 1995:37). The white authorities were self-sufficient from property tax and other local taxes, while the black authorities were not self-sufficient. The apartheid regime separated Soweto from the rest of Johannesburg to make it completely black area. In 1995 a post-apartheid City Council was established to serve both white and black communities. This amalgamation led to transformation of structures and many blacks and women were employed in the city as part of the process of affirmative action policy. Affirmative action was adopted a messenger of change (Cloete & Makgoro, 1995: 38).

## **5.4 CURRENT CHALLENGES FACING LOCAL GOVERNMENT**

South Africa is experiencing a process of formidable and fundamental change. Public officials as well as politicians are under tremendous pressure as critical demands are being placed on them. The demands include interventions such as affirmative action, employment equity and the importance of managing diversity in the workplace. In the context of democracy, officials are expected to act responsibly, to account for their

actions and ordinary citizens have the right to access to information in view of transparency within the code of good practice. One of the main responsibilities of a municipality is to render services to the community it serves. If a municipality fails to render basic services in the manner that is required, that municipality has failed to serve its purpose and shows that some of the officials are incapable. In this new dispensation, municipalities are experiencing various problems such as fraud and corruption, mismanagement of finances and lack of skills. Some of these challenges occurred due to political appointments which were unfortunately displayed as affirmative action process, with less consideration to qualifications and experience (DPLG, 1995:2).

## **5.5 PERCEPTIONS OF AFFIRMATIVE ACTION**

During the apartheid government, laws were enacted aimed at holding blacks back by denying them opportunities that would advance them to a successful future. Blacks were blocked from assuming positions of authority (Schrire, 1991:5). Prior to the new dispensation, the quality of qualifications of blacks did not enable them to advance to better positions in local government, because of apartheid laws. Affirmative action is a redress mechanism aimed at ensuring that suitably qualified designated groups (blacks, women and people with disabilities) have equal opportunities to obtain the kind of jobs they are qualified for (Wingrove, 1995:6).

In its current form, affirmative action stands accused of hurting millions of young whites who have had little or nothing to do with apartheid. Many young whites, with sorely needed skills, have emigrated, exacerbating the country's skills crisis. White businesses seeking greener pastures aggravate the unemployment problem. Affirmative action is blamed for targeting huge vacancies in the public sector, which will only be occupied by blacks. Given the statistics of the present underperformance of senior officials in the selected municipalities in Gauteng Province, the role of affirmative action leaves much to be desired. To some, affirmative action is nothing more than a plot to offer jobs and contracts to the politically connected few. It invariably discriminates against the literate and skilled (non-connected individuals) black majority who remain outside the formal job market (Seepe, 2007:5).

Most skilled and literate blacks are experiencing a second blow, first from the apartheid Nationalist Party government, and now from the so called democratic African National Congress government. There is a perception that affirmative action demands less of blacks and exempts them from expectations, principles and standards of excellence demanded for others. Blacks are spared the rigours of development in order to blame the apartheid government forever, to see themselves as victims of apartheid without the potential to change the *status quo* (Seepe, 2007:5).

Seepe (2007:87) also pointed out that affirmative action is rooted in the compromise entered into by the ANC and its alliances during the political transition. The liberation forces were not strong enough to defeat the apartheid regime unless they came together. The ANC government came through in partnership with other liberation movements whose ideologies had to be accommodated even though they are bitter to swallow. In the context of a stalemate, a win-win solution had to be crafted to appease contending forces such as the Pan Africanist Party, the Black Consciousness, the South African Communist Party, and other, involved in the political struggle. It was also mentioned that affirmative action and BEE have become convenient instruments/mechanisms to deploy cadres in public institutions at all levels of power. In this regard credentials took precedence over merit, skills and capabilities. Assumption of office became a way of rewarding comrades in the struggle. One of the worrying factors, is that affirmative action does not have a sunset clause and President Zuma is playing a double standard when dealing with it. When speaking to the Afrikaners, he says affirmative action may be revised. When speaking to his supporters, or the media, he changes tact and say, affirmative action is here to stay (Stolley, 2008:1) In other words, the President confirmed the reason why affirmative action does not have a sunset clause, it is here to stay.

The leader of the Inkatha Freedom Party, Mangusuthu Buthelezi, slams affirmative action as follows: 'the government's reckless implementation of the affirmative action policy is forcing white people to leave the country, creating a skills shortage crisis. We need to offer incentives to the whites'. He also pointed out that the reason for the

majority of whites who supported the referendum, calling an end to the apartheid rule was because they believed they would have a place in the new South Africa. If the majority of National Party members envisaged in the early 1990's the way affirmative action and classification would come to dominate the post-apartheid labour market today some would have had voted against change if they knew things would be like this today (Cox, 2012:1).

An honest appraisal of affirmative action is required, if some of the positive aspects are to be restored and the seriousness about change in South Africa. However, proponents of affirmative action believe that the observations and criticisms of affirmative action are misplaced. It should be understood that affirmative action is a limited intervention and could only benefit a few. The fact that affirmative action did not benefit everybody, does not mean affirmative action does not work, does not mean that the works of affirmative action are not visible but it is unfortunate that it cannot benefit everyone at the same time. However, it should be pointed out that it is not the 'who' factor that is question in this study, but the 'how' factor, the merits that the designated groups should have to qualify as beneficiaries of affirmative action (Farhana, 2010:1).

### **5.5.1 Ongoing debates on affirmative action**

The debates on affirmative action have come a long way since the inception of South African democracy in 1994. Affirmative action has been on the agenda of various committee discussions including parliamentary discussions, workshops and the business world. Even after 19 years of democracy, there is still an intimate concentration on how affirmative action is being practised in other organisations where change has been effected, how it has been practiced. Until end of 2010 there still existed a discrepancy on how people perceive the success of affirmative action. Fingers are pointed and statements such as " I knew from the start that this black advancement business will not work" are echoed (Hebert, 1994:38).

It seems as if present debates surrounding the concept affirmative action, no longer revolves around whether affirmative action is a moral necessity or not, but rather

questioning the way in which affirmative action programmes are being implemented in organisations. From the preceding discussions, given the status of service delivery within municipalities in South Africa, none of the municipalities could claim to be 'clean' in all aspects. The quality of leadership and the government's lenient approach in dealing with maladministration, fraud and corruption, mismanagement of finances and nepotism, leaves sufficient evidence for the critics of affirmative action to conclude that affirmative action is the main cause of the current mess, especially in municipalities (Cronje, 2011:1).

#### **5.5.1.1 Racism in reverse or reverse discrimination**

Many people especially white males perceive affirmative action as reverse discrimination. They feel that affirmative action is nothing else but apartheid in reverse. However, it is argued that members on the non-designated group (white males) who feel strongly about reverse discrimination are those that have unfulfilled expectations (those who have not been promoted or did not get the jobs they hoped for) and therefore form negative opinions about affirmative action, experiencing that their chances of being promoted are completely shut. They view affirmative action as discrimination (Charlton and Van Niekerk, 1994:13).

It can also be argued that members of the designated group (blacks, coloureds and women) who are opposed to affirmative action, are those who do not believe that Government is fair enough to deal with the implications of affirmative action decisively. Those people might have been involved in politics previously and were disappointed, and those who know the actual mandate of the ruling party regarding affirmative action do not want to confess to this in public. It might be reasonable to assume that there are members of the designated groups who have had subjective experiences of affirmative action which has made them to feel like 'victims' and that they are therefore inclined to oppose it (Bendix, 2010:592).

Bendix (2010:593) argues that affirmative action will only become unfair and discriminatory if an obviously disadvantaged person is appointed at all costs and without

allowing other persons the opportunity to compete. If South African legislation on affirmative action is properly implemented, there is no reason to oppose affirmative action programmes or have negative attitudes towards them. The South African Employment Equity Act 55 of 1998 states that the employer is not required to take any decision concerning the employment policy or practice that would establish an absolute barrier to the prospective or continued employment or achievement of people from the designated groups (Employment Equity Act 1998:20).

In practice, South Africa's Employment Equity Act has recently been 'tested' as shown in the following case. A white magistrate applied for, and won a case of unfair discrimination in the Equality Court against the Port Elizabeth magistrate's court. Magistrate Mr Du Preez, who had 19 years of experience as a magistrate and holds the degrees, B.luris, LLB and a Master of Public Administration did not get short-listed after he applied for a position at the magistrate's court, on the ground that he is a white male. Instead several inexperienced black women made the list (Azzakani, 2006:11). The judge in the case ruled that the magistrate's court's listing procedures for appointing regional court magistrates discriminated unfairly against white male applicants and those procedures made it impossible for White males to be promoted over Black women or any other non-race factors (Azzakani, 2006:11). Consequently, the post had to be re-advertised as the short listing procedures were subjected to unfair discrimination as is outlined in the South African Employment Equity Act (Pienaar, 2009:32).

In another case a black female applicant applied for the position of Director: City Health, but she was informed that she was unsuccessful because a white male was appointed and she took the matter to the Commission of Conciliation, Mediation and Arbitration (CCMA) and eventually to the Labour Court to set aside the appointment of the successful candidate and to appoint her to the post or reconsider the appointment in compliance with the City's non-discrimination and affirmative action obligations. The judge held that the Employment Equity Act does not establish an individual right to affirmative action that could be decided by the Labour Court and refused the order sought by the applicant. The Court distinguished between chapter 2 (which prohibits

unfair discrimination) and chapter 3 of the Employment Equity Act (which concerns affirmative action measures and which can only be brought into operation within a collective environment) and held that the Employment Equity Act, clearly does not provide an individual entitlement to affirmative action. Instead a failure to implement affirmative action measures by an employer can only give rise to an enforcement issue, for example non-compliance can result in a fine, which is determined by the court (Dudley v City of Cape Town & Another, 2004 5 BLLR 423 ( IC). In both these cases, a white male was protected from reverse discrimination by the same Act that provides affirmative action in South Africa.

In the case of Bernard vs. SAPS, the decision was made by the Labour Court in favour of Bernard, where the Court found that Bernard was unfairly discriminated against by having her promotion not approved merely because she happened to be white, despite the fact that she was recommended for such promotion. Both the Constitutional Court and the Labour Court have already made clear that although affirmative action is constitutionally mandated and sanctioned by the Employment Equity Act, representivity cannot be the only criteria used to decide on the appointment or promotion of an individual. The Employment Equity Act has to be interpreted in accordance with the Constitution, especially Section 9(2) of the Constitution which prescribes at least three conditions for a valid affirmative action policy. Similarly, it is also possible that there are people from designated groups who may perceive affirmative action as a source of entitlement in the same way that many white males used the apartheid system as a source of privilege (Barker, 2007:178). The above cases clearly indicated that affirmative action is not discrimination in reverse. What is observed from the study is that wrong implementation of affirmative action is a major concern within the workplace.

#### **5.5.1.2 Merit debate**

A second debate that influences individual attitudes toward affirmative action is that of merit. A question that is being asked is whether race or gender substitute for merit, which refers to qualifications (Idasa, 1995:184) In this case it was argued that most (non-designated groups) specifically white males who are concerned about merit are those

who have invested heavily in terms of resources and time in educating themselves so as to position themselves in certain careers they studied for, and are greatly disappointed when opportunities are afforded to designated group members only.

Most blacks might also feel insulted as they may be perceived as political appointments whereas they are entitled to those positions in terms of their skills and qualifications. They may be stigmatised as being incompetent (as members of designated groups) because of the perception that their selection was based on affirmative action rather than individual merit. Quanta (1995:116) points out that black employees want equal treatment not special favours. If given special treatment they feel as if they are not as capable as white employees to cope with the demands of a career. If affirmative action is implemented correctly, there is no reason why any employee should be appointed in any position without relevant qualifications, skills and/or experience (Quanta, 1995:116).

#### **5.5.1.3 Drop in standards**

The debate about the drop in standards is closely related to the debate on merits. This argument is derived from an economic point of view. Putting less qualified people into positions will damage South Africa's economy. Those who are negatively inclined to this debate argue that affirmative action will decrease economic productivity and international competitiveness because hiring standards are lowered. This statement can be true only if affirmative action is implemented incorrectly. Appointing less qualified persons in positions of influence exposes the weaknesses of an organisation, keeping underperforming employees in positions regardless of their failures and implies window dressing, will also have a negative impact on the performance of the organisation. Consequently, competition is not paramount when making selection decisions. From the research it is clear that if South Africa's affirmative action legislation will be properly implemented, there is no reason for standards to drop and therefore there will be no reason to oppose affirmative action programmes (Quanta, 1995:116).



#### **5.5.1.4 Tokenism debate**

Tokenism occurs when a company appoints a person (from a previously disadvantaged group), knowing that the person does not have the necessary skills for the position, but because it will look good to the outside world. Tokenism is closely related to other debates such as the dropping of standards and merit, specifically from the members of the designated groups that subscribe to those debates and who will probably hold a negative view of tokenism. Those officials are given luxury offices and exorbitant salaries, without concomitant responsibilities (Van Niekerk, 1994:53).

#### **5.5.1.5 Quota debate**

The issue of a quota system is strongly related to the reverse racism, merit, tokenism and a drop in standards debates and emerges as another highly sensitive topic whenever attitudes towards affirmative action are discussed. It should not be about numbers of black people whom are employed in the company, but rather the quality of the candidates interviewed and appointed in those positions. In most cases affirmative action programmes fail because top management sees it in terms of filling the quotas (Thomas, 1993:92).

### **5.6 CONCLUSION**

This chapter provided an overall view of the transformation process in local government in relation to affirmative action. The role of affirmative action in Local Government was clearly explained in five selected municipalities in Gauteng , namely, Ekurhuleni Metropolitan Municipality, Midvaal Local Municipality, Emfuleni Local Municipality, City of Tshwane Metropolitan Municipality and City of Johannesburg Metropolitan Municipality where the study was conducted. This chapter also addressed the perceptions raised during the implementation of affirmative action in local government. The success of affirmative action depends largely on the type of model, culture and structures chosen by the organisation (Masiloane, 2001:62).

Chapter 6 of this dissertation will focus on the research results and interpretation.

## **CHAPTER 6**

### **RESEARCH RESULTS AND INTERPRETATION**

#### **6.1 INTRODUCTION**

Since it was indicated in the previous chapter that South Africa may learn from other countries that have practised affirmative action earlier, such as Malaysia and the United States of America it is also important to note that each country translated the effects of affirmative action according to their needs, culture and the history of their country. South Africa is unique in its situation, hence the questionnaire focused more on gender and racial inequality. The history of apartheid dictated that the South African Government allocate opportunities and resources according to race and gender. There are close similarities between the South African and Malaysian government decisions in the consideration of setting of quotas, timescales, training and development.

#### **6.2 ANALYSING RESPONSES FROM THE QUESTIONNAIRE**

The responses of the questionnaire pointed out that the limitations in policy implementation were as a result of the aspects described below.

##### **6.2.1 Knowledge of affirmative action policy**

Figure 6.1 shows that 66.5% of the respondents from the five municipalities in Gauteng Province, the majority of which are blue collar workers, were not aware of the existence of the policy of affirmative action. To the contrary, only a small number of white employees did not know in detail what affirmative action is all about. It was also recorded from the questionnaires that 33.5% of the employees most of whom were in senior and middle management, confirmed their knowledge in respect of the affirmative action policy and the implementation thereof.

The above percentages are a clear indication that most employees are not well informed of the implementation of the affirmative action policy within the municipalities. It means

the employer overlooked the importance of the dissemination of the policy, especially to the black workers in lower positions. In order to achieve good results in the implementation of affirmative action strategies, the employer must engage in broader consultations with all levels of the organisations.

As far as the figures in the following pages are concerned, please take note that a “Yes” indicates that the respondents agreed with the statement posed and a “No” indicates that they disagreed with the statement.

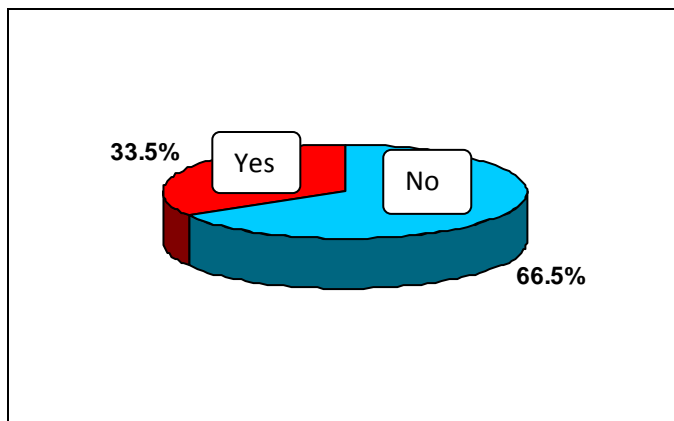


Figure 6.1: Knowledge of the affirmative action policy

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.2 Need for employee development

Figure 6.2 indicates that 59.1% of respondents did not know about the Human Resource Development Policy. The Human Resource Development Policy is a programme designed for the training of employees. Forty point nine percent of employees confirmed their awareness of the existence of the Human Resource Development Policy which entitles them to receive further training and development. Among those employees most of them who had knowledge about the Human Resource Policy were whites and a greater number of those who did not have knowledge of the Human Resource Policy were blacks.

Human (1992:12) emphasises the importance of people development. It is expected that every employee should be aware of his/her wellbeing and development opportunities

within his/her work environment. If people have not been adequately empowered, it will be difficult to implement affirmative action successfully. Affirmative action will not be successful if there are no programmes in place to empower the new appointees. Institutions should not appoint people from designated groups to prove their inability or failures. The Human Resource Department should regard the development of people as a strategic issue and also ensure that every employee is aware of the human resource programmes intended to improve and develop their well-being and working skills.

Municipalities come from a background where blacks were denied opportunities to learn or to prove themselves in senior and top management positions within their place of work. It is against this background that institutions should have a clear understanding that these workers from the designated groups did not create the environment they find themselves in, but it is an environment created by the apartheid government. It was also evident during the research that there is great tension between the white employees and black employees in various municipalities regarding affirmative action. There is a negative feeling from the side of White employees whenever affirmative action creates development opportunities for black employees (Seepe, 2007:5).

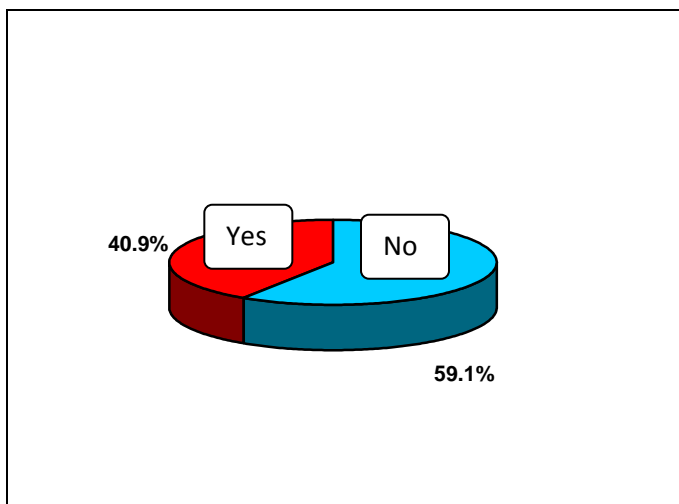


Figure 6.2: Knowledge of the employee development policy

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.3 Timescales

Figure 6.3 indicates that 82% of black respondents are of the opinion that timescales have not been stipulated for the implementation of affirmative action because whites still have economic power. However 18% of the white respondents indicated that they feel dissatisfied about the fact that timeframes have not been placed with regard to the implementation of affirmative action as shown in Figure 6.3 below. Nesh (2003:28), Rampersad (2000:61) and Taole (1997:45) state that the purpose of affirmative action is to uplift previously disadvantaged people in order to put them on an equal footing with those who oppressed them. The South African government has not given the timeframes for the implementation of affirmative action. It is important to state how long affirmative action will be implemented as a policy, because this can also help allay the fears of many white professionals who believe that affirmative action will never come to an end.

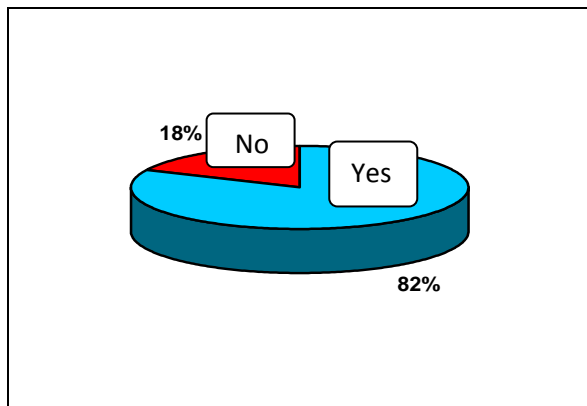


Figure 6.3: Timescales in affirmative action

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.4 Gender equality

Figure 6.4 shows that 55% of respondents are of the opinion that implementation of an affirmative action policy is done on the basis of race and does not promote gender. Respondents who expressed that gender should influence the application of an affirmative action policy make up as much as 45% of the total number of respondents. The White Paper on Transformation of the Public Sector provides that 50% of blacks should be in management by 1999, 30% of women by 1999 and 2% of people with

disabilities by 2005. A small number of white employees support affirmative action, on condition that authorities implement it as fairly as possible, stating the minimum requirements, experience and qualifications as a requisite for acquisition of posts and that posts should never be earmarked for certain individuals.

It was also clear from the responses that 55% of the respondents understood affirmative action to mean rectification of racial imbalances and not gender. Up to 2011 it was only the African National Congress that had set its targets on employment based on gender representations which is aligned with the White Paper on Transformation of the Public Sector 1995, and are gradually meeting these targets in their political structures and administration. The majority of senior positions in municipalities are still held by men. It is recommended that municipalities should seriously engage women in senior and top management. Figure 6.4 below shows the proportion of respondents who understood affirmative action to mean rectification of racial and not gender imbalances.

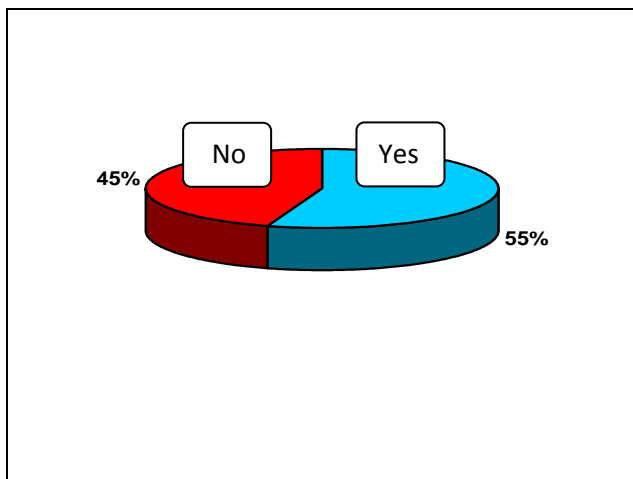


Figure 6.4: Affirmative action to mean rectification of racial imbalances and not gender

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.5 Monitoring mechanisms

Figures 6.5 shows that 55% of the respondents indicate that there is a lack of commitment from municipalities in monitoring the non-implementation of affirmative action. However this 55% is made up of professionals who did not make it to the top within the employment structure. There is a strong feeling that these professionals were

overlooked during interviews and that candidates who had no qualifications or experience were appointed under the banner of affirmative action. Some of these appointments were classified as political appointments. The other 35% of the respondents indicated that proper monitoring is done.

Obviously these are those who benefited from this practice. The other 10% of the respondents believed that the whole idea of affirmative action is not practical because it benefits only a certain group of people, it is politically driven and as a result monitoring affirmative action will be done in a way that suits their political needs.

Human (1993:8) states that a committee comprising the employer, employee and union representatives should continuously monitor, evaluate and refine the affirmative action strategy. Human further recommends that constant monitoring should be kept as to the number of blacks and women provided with promotion opportunities. Most of the municipalities do not have such committees charged with the responsibilities of ensuring that affirmative action policies are adhered to.

What also emerged during the interviews is the fact that even where the structures have been put in place, implementation is still a problem. It is important to note that the availability of policy documents does not automatically lead to policy implementation. Action in terms of implementing the content of the policy is what matters.

In this regard the researcher recommends that performance agreements should be signed with the heads of all relevant departments to ensure that affirmative action becomes a target/goal in their day-to-day activities.

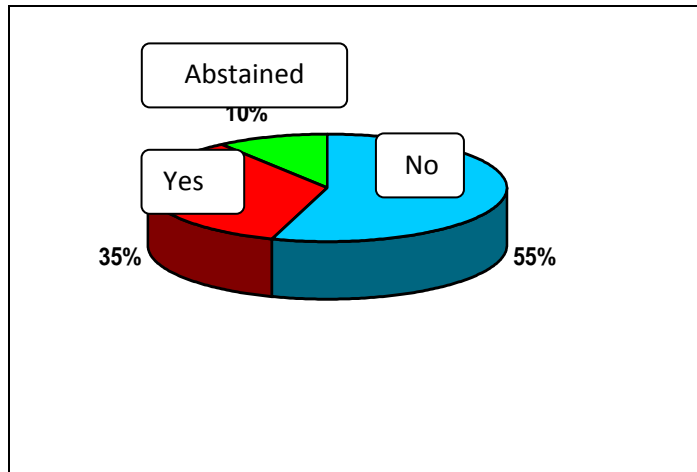


Figure 6.5: Opinions about monitoring mechanisms

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.6 Organisational transformation

Figure 6.6 shows that 72% of the respondents confirmed that most municipalities in Gauteng are in the process of being transformed in terms of numbers of black and white representations. However, lack of commitment of personnel to organisational principles and financial management becomes a great concern. Lack of adherence to transformation policies which are supposed to govern municipalities creates a great concern. Many of the municipalities in South Africa are experiencing corruption, nepotism and lack of accountability and these actions seriously affect service delivery. Twenty eight percent (28%) of the respondents dispute the fact that there is total transformation in municipalities since there are still no strategies to address the poverty of black people within the municipalities.

The main concern derived from the majority of the respondents is that policies are only displayed for the sake of compliance, but when it comes to the implementation thereof, it does not happen. With the appointment of staff, though blacks and women in general are appointed, the who and how of the appointments are still of great concern. Appointments are still perceived to be made on a political level which strongly affects administration in municipalities.

Thomas (1996:8) purports that organisations should not introduce affirmative action to appoint their compatriots or only to fulfil a political mandate, where a few black or female



faces will make the organisation appear politically correct. African politics is structured in such a way that most politicians feel that they are there to make sure that when their terms of service come to an end, they should have made enough money to sustain themselves in the years to come.

In examining municipalities within Gauteng where the research was conducted, it is alleged that most municipalities appoint some of the officials in key positions for political reasons without relevant experience or qualifications. The allegations of non-performance and incapability due to lack of experience and qualifications manifest in wrong decisions taken by those officials leading to mismanagement of finances. Most municipalities are involved in corruption because some of the officials lack experience and they have no appropriate qualifications. Unfortunately affirmative action is blamed in these cases and, all incapable individuals who fail to run the municipalities are labelled generally as 'blacks or women failures'. Nothing is said about the panel which has ignored the best candidates to pursue their own political mandate. Service delivery is sacrificed at the expense of political correctness. When such incidents occur it is clearly indicative of the fact that those in authority are not committed to the success of the organisation and improving service delivery.

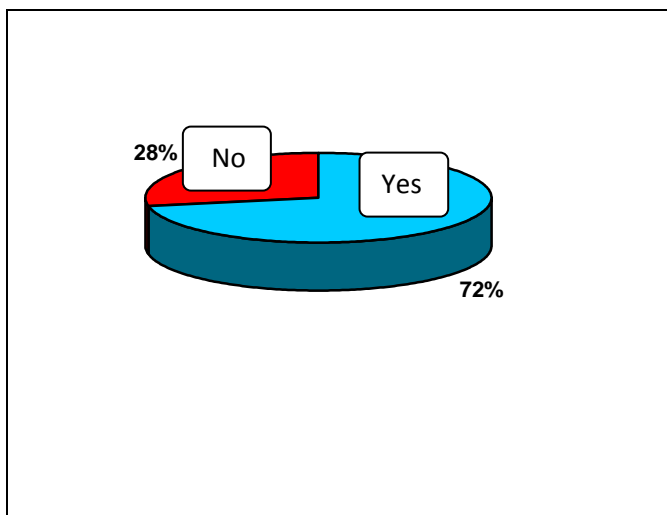


Figure 6.6: Opinions on organisational transformation

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.7 Transparency in the implementation of affirmative action

Figures 6.7 illustrates that 72.5% of the employees are of the opinion that the municipalities do not implement affirmative action effectively. During the interviews many employees indicated that there had been many questionable appointments to the extent that some positions are even filled without being advertised. However, 27.5% of the employees believe that municipalities are transparent as required when it comes to the implementation of affirmative action.

In some cases it has been proven that many senior personnel including the municipal managers in certain municipalities were appointed without the required qualifications, whereas other black candidates with higher qualifications and experience were not considered for the positions. Affirmative action results should be transparent to all including those candidates who were not considered for the positions.

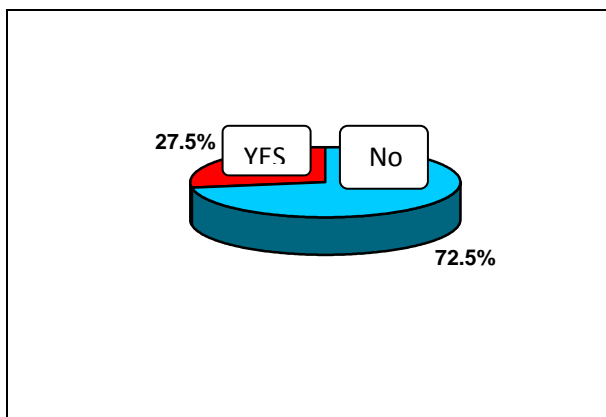


Figure 6.7: Transparency in the implementation of affirmative action

Source : Compiled by the researcher, T.J. Makgoba 2012.

### 6.2.8 Consistency with regard to the implementation of affirmative action

Figure 6.8 shows that 78.3% of the employees in municipalities were of the opinion that there was no consistency in the implementation of affirmative action. The group believed that the authorities only stress the requirements of affirmative action when certain positions are to be filled, but in other positions nothing is said about affirmative action. Affirmative action should be implemented at all levels within the various municipal

structures. Consistency will be considered practical if authorities could bear in mind that affirmative action has got nothing to do with the politics of the ruling party, political affiliation or background of the individual, but has much to do with all South Africans who were deprived of opportunities in the past. It should also be clear that where only members from the designated group have applied for a similar position, there is no need to implement affirmative action because all the candidates have the same status and it is expected that all candidates should be treated equally. On the other hand 21.7% were of the view that municipalities are consistent in the implementation of the affirmative action policy, as shown in Figure 6.8.

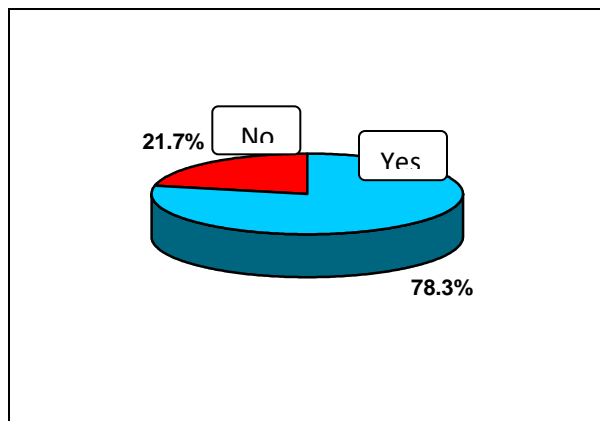


Figure 6.8: Consistency with regard to the implementation of affirmative action

Source : Compiled by the researcher, T.J. Makgoba 2012.

#### 6.2.9 Future of affirmative action

Figure 6.9 illustrates that fifty three percent (53%) of the respondents agreed that affirmative action should be a permanent feature in the job market. Many authors argue that affirmative action should cease to function as soon as employment equity is achieved. However, in reality it is difficult to attach a specific timeframe or number as to when affirmative action will stop to function as a policy. Respondents in general agree that affirmative action is a long term strategy and it would take a while to achieve equality in the labour force. It can also be anticipated that proponents of affirmative action still seek protection against the unfairness of the previous systems and the permanence of affirmative action would guarantee that they do not return to similar situations.

It is evident that among blacks there are those who believe that affirmative action should not be permanent. Forty seven percent (47%) of the respondents agreed that it is required of the organisation to appoint persons from the designated groups at all times in order to bring a balance between the whites and blacks as well as males and females including the disabled persons, as shown in Figure 6.9 below. There is a wrong perception among black and white employees that affirmative action and the Employment Equity Act, create a barrier to employment of white males. These perceptions might have been created by the many appointments and promotions of people from designated group in the departments.

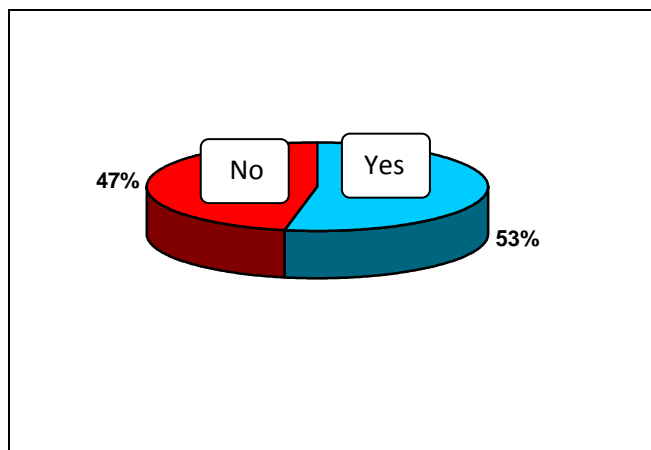


Figure 6.9 Affirmative action should have a permanent feature in the job market

Source : Compiled by the researcher, T.J. Makgoba 2012.

#### **6.2.10 Affirmative action should have priority over efficient service delivery**

Around 66% of the respondents agreed that efficient service delivery should have priority over affirmative action when appointments are made, whereas almost 34% abstained from answering the question directly, as shown in Figure 6.10

The general consensus is, although affirmative action is imperative, a high level of service delivery should still be maintained. This is an indication that staff are not in favour of the appointment of wholly unqualified or less than 'suitably qualified' candidates into positions just to get the numbers right. It is highly imperative to acknowledge that

previously disadvantaged individuals have an individual right to affirmative action only if they are qualified.

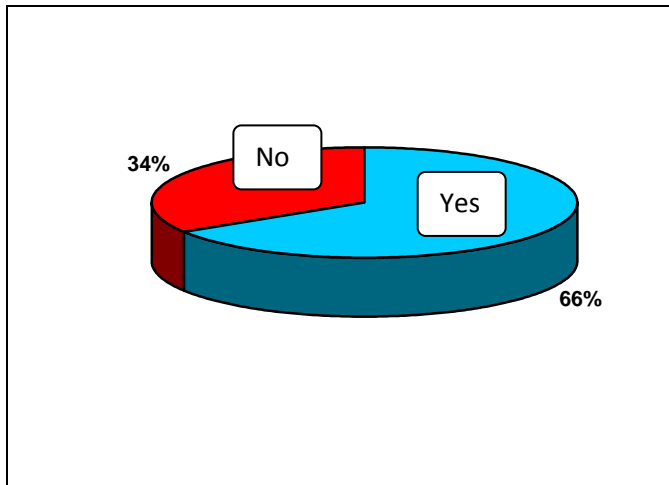


Figure 6.10: Efficiency should have priority over affirmative action

Source : Compiled by the researcher, T.J. Makgoba 2012.

#### **6.2.11 Qualifications not necessary for affirmative action appointments**

Fifty eight percent (58%) of the respondents further agreed that some of the previously disadvantaged individuals are promoted to higher positions without ensuring that they have the necessary skills. Many blacks have been placed in positions they are not qualified for, whereas, qualified black individuals were not been considered for the positions during the interviews. The issue of political appointments crosses racial lines. In Chapter 5 under 5.3.2, it was pointed out that the Democratic Alliance led municipality replaced a black acting municipal manager who had excellent qualifications and with a mayor of that time. Even though the requirements for the position were clearly stated, the municipality decided to appoint him without relevant qualifications. Management overlooked the importance of skills, qualifications and service delivery, and concentrated on political representation within municipal administration. The contract of the municipal manager was terminated due to maladministration.

### **6.3 CONCLUSION**

This chapter outlined the evaluation and interpretation of responses received through the questionnaires. The research analysis and interpretation was designed to seek information on the following aspects: knowledge of the affirmative action policy, the need for employee development, timescales, gender equality, monitoring mechanisms, organisational transformation, transparency in the implementation of affirmative action, consistency with regards to the implementation of affirmative action and the future of affirmative action. The chapter identified various aspects on which the municipalities are not performing well with regards to implementation of affirmative action and are encouraged to improve.

The purpose of the next chapter will be to provide findings of the research, a concluding discussion of the results of the survey, and to make recommendations on areas of concern where municipalities may consider improving their present situation.

## **CHAPTER 7**

### **FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **7.1 INTRODUCTION**

Chapter one focussed on the background of the study and the motivation of the research topic. Chapter 2 outlined government policies in relation to affirmative action. Chapter 3 dealt with factors imposing limitations on affirmative action. Chapter 4 discussed the methodology used to investigate the research problem. Chapter 5 focused on the practical implementation of affirmative action in local government. Chapter 6 focussed on the interpretation of responses received from the questionnaires in relation to the performance of municipalities towards the implementation of affirmative action policies. The purpose of this chapter is to provide the findings of the research, a concluding discussion on the results of the research, make recommendations to be considered by municipalities in order to improve problem areas and lastly make suggestions for further research on the subject.

#### **7.2 FINDINGS**

The research identified that some employees in these various municipalities have different perceptions, expectations, learning experiences and attitudes towards affirmative action and the implementation of employment equity.

The research findings revealed that the three municipalities namely Ekurhuleni Metropolitan Municipality, City of Johannesburg Metropolitan Municipality and the City of Tshwane Metropolitan Municipality were able to perform well in 2011 in the following areas:

- Criteria for appointment of suitably qualified candidates.

Most of the municipalities did not comply with this requirement previously, and it was only after 2005 that the municipalities gained momentum in this sphere. This criteria for appointment of suitable candidates includes the following process:

- (i) Determine whether the candidate is suitably qualified to perform the inherent requirements of the job.
- (ii) The candidates who did not qualify in terms of the specified requirements should not be considered for interviews.
- (iii) Employment equity and affirmative action status should be upheld at all levels.
- (iv) References checking may be used to assess whether a candidate is suitably qualified for the position, or meets competency criteria of the job in question.

➤ Representative interviewing committees.

The three mentioned Metropolitan Municipalities plus Emfuleni and Sedibeng District Municipalities met the minimum standards of compliance in that regard as they also included union representation with observer status, although Midvaal Municipality is still adamant in the exclusion of union representatives and transparency is highly questionable.

➤ Provision of skills necessary for operational needs.

All other municipalities involved in this research are compliant, except for Midvaal Municipality where the provision of training is skewed in terms of race, more especially in the Corporate Services department, Development & Planning and Finance departments. The Human Resource Department relies on the heads of departments to inform them which individuals require training and if there is not feedback from the heads of department, even though the employees complain about the reluctance of the heads towards allocation of training, no action is taken.

The findings also revealed that the above municipalities are not performing well in the following aspects:

- Although the organisation's policies commit well to a communication strategy, there is insufficient communication on affirmative action issues.



- Forms of racism are still experienced in some of the municipalities in various departments. South Africa's young democracy needs to be nurtured to address any form of racial discrimination regardless of which party is in power.
- More emphasis is focused on race and gender and less attention is given to preferential treatment of the disabled.
- The appointment and promotion of staff, especially with the impact that affirmative action has, is still a controversial issue. There is a great concern about how designated groups are treated when it comes to the criteria of suitably qualified individuals. The process should be reviewed to reassure staff that it is fair and that applicants from designated groups have equal chances in interviews.
- Mentoring of officials who were seconded or inherited from the disestablished municipalities was still a great concern, since they were entitled to retain their benefits under the section 12 Notice of the Municipal Systems Act 32 of 2000. They are, however, not allowed to retain their benefits when they apply for higher posts within their municipalities, such as travelling allowances and salaries which are higher than the current benefits within other municipalities. If they apply for higher posts they forfeit their current status and thereby choose to earn less money in the higher post. Some of the officials including, the researcher, opted to lose higher salaries and travelling allowances in exchange for higher posts. These officials faced a serious challenge, because their subordinates were considered for higher positions while the contractual to incumbent (CTI) employees (those employees who retain their previous benefits from their previous employers) as referred to under item 5.3.2 of the dissertation, were restricted by their benefits, even though these officials were willing to keep their current benefits in their new posts. The municipalities based their argument on the fact that the section 12 Notice is not progressive. This anomaly was used to discourage qualifying CTI officials in order to appoint less qualified employees in positions of authority.

The Municipal System Amendment Act 7 of 2011, which was published on 5 July 2011 came as an answer to many municipalities who were seriously affected by these political appointments. In most instances affirmative action was used by top management to push a political agenda and not necessarily to fulfil services delivery.

### **7.3 RECOMMENDATIONS**

In view of the findings of this research, recommendations are made in order to improve the problematic areas identified.

#### **7.3.1 Communication**

The findings indicate that there is an urgent need to improve communication within the municipalities. Communication with personnel regarding policies will make employees aware of their rights and obligations and will ensure that employees understand the logic behind it. The formulation of a coherent communication strategy is imperative.

- The relevant municipalities should review their communication strategies on issues of affirmative action and employment equity.
- Communication should be structured in such a way that it will allow a two way upward as well as downward feedback, through management's formal meetings.
- A communication policy should form part of a manager's performance review.
- The worker's union should play a vital role in communicating affirmative action issues.

#### **7.3.2 Racism and sexism**

Unions should encourage employees to use the grievance process to report incidents of racism and sexism. An emphasis on the implementation of a code of conduct should be expressed whenever cases of this nature prevail in the working environment in order to deal with the unwarranted behaviour that undermines the existence of gender equality and races.

### **7.3.3 Disabled persons**

It should be emphasised that persons with disabilities have equal rights and responsibilities like any able person. A system of integration of disabled persons into the workplace should be enhanced. Emphasis must be put on the appointment of disabled persons through more rigorous advertisements for disabled applicants.

### **7.3.4 Recruitment, appointment and promotion of staff**

Recruitment is a major area of concern. Since the legislation deals with advancement of the former disadvantaged or designated groups, there is great expectation from employees in those categories whenever opportunities unfold. It is impossible to employ or promote all people within those categories at the same time. The determining factor of promotions and new appointments should be based on suitably qualified individuals and not only on race and gender. Proper channels and processes of appointments and promotions should be implemented in order to nullify allegations of nepotism and political appointments.

The affected municipalities should allow employees with contractual to incumbent (CTI) status to apply for higher posts and if the benefits in those posts are less than what they are receiving now, they should be allowed to keep their current benefits. This anomaly is experienced in small municipalities such as Midvaal Local Municipality and other municipalities in Gauteng.

### **7.3.5 Mentoring**

Municipalities should commit themselves to the implementation of effective mentorship programmes in order to identify employees who need to be included in the management development programmes as part of the affirmative action process with an endeavour to bring racial and gender balance within the working environment.

It has been proven from this research that affirmative action is not meant to disadvantage whites, especially white males, but is intended to bring a balance in the labour market between racial groups as part of a corrective measure to ensure that the

legacy of apartheid does not continue. It should also be noted that it was due to this employment discrimination, that the economy of this country only benefitted the white community and other races were excluded. It is also important to note that the fruits of affirmative action will not benefit blacks in this country alone, but the nation as a whole. The policy of affirmative action is not the end result of success on its own, but the manner in which it is implemented will bring positive results to South Africa. It was also noted during the research that practices of misuse of this policy by political structures and individual politicians created great concern in both black and white professionals and the academic field at large. The misuse of power under the auspices of affirmative action caused many professionals and business people to seek better employment outside South Africa. What prompted those individuals to leave South Africa with their skills is not only the existence of affirmative action, since South Africa is not the first country to implement the policy. However, the approach the South African authorities adopted in the implementation of affirmative action was of great concern, hence the amendment of the Municipal Systems Act was introduced to deal with those concerns.

#### **7.4 CONCLUSION**

The test cases discussed in section 5.6.1.1 prove that affirmative action is not intended to unfairly discriminate against whites. In the three cases mentioned two white males and a white female were protected from reverse discrimination by the same Act that provides affirmative action. This study clearly established that affirmative action is not intended to unfairly discriminate against any citizen of this country, but to ensure that those who were previously disadvantaged by the apartheid system in benefiting from the resources of this country are now incorporated in the economic and social systems regardless of their race, creed or religion.

Affirmative action is indeed not discrimination in reverse, since discrimination practised by the apartheid government was not focused on equality of all races. Its intention was to oppress other races and uplift the white race. It was also meant to oppress the female gender as a whole, though white women were better off than blacks, and uplift white males, which is unfair discrimination. Affirmative action will only become unfair and

discriminatory if a previously disadvantaged person is appointed at all costs and without allowing other persons the opportunity to compete.

In conclusion, the words of Assistant Dean Janice S. Robinson, Director of the Minority Student Program at Rutgers Law School, New Jersey, USA, articulates affirmative action as follows:

“Affirmative Action does not mean selecting a less qualified person over a more qualified person.....Rather, Affirmative Action acknowledges the history of America and its effect on society today. Affirmative Action opens doors so that additional groups may have an opportunity to succeed and contribute to America” (Fish, 1995:8).

## **7.5 SUGGESTIONS FOR FURTHER STUDIES**

It is recommended that further studies be done on the impact of political appointments in government institutions versus affirmative action. Throughout the research the responses indicated that there is a great concern regarding the so-called political appointments as they only empower political affiliates of the governing party in those municipalities and disadvantages qualified candidates even though they are members of designated groups.

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## **ANNEXURE “A”**

### **QUESTIONNAIRE**

**13 MAY 2011**

Dear respondent

The questionnaire is part of a research project to determine certain aspects regarding the implementation of affirmative strategy in organisations. It is very important to do research considering the above-mentioned topic, because Affirmative Action is necessary for transformation since the beginning of the new democratic government. South Africa is a new nation which subscribes to non-racial, non-sexist democracy with equal representation at all levels. The researcher would appreciate your completion of this questionnaire as honestly as possible in order to obtain correct and trustworthy information. Please forward your completed questionnaire not later than 30 May 2011.

Please be informed that data received from the questionnaire will be kept confidential to protect your identity. I prefer that you remain anonymous and you are not forced to give any information you are not comfortable with. Your participation is voluntary and you may withdraw at any stage of the study if you feel threatened. Should you feel uncomfortable to answer any question in this questionnaire, please do not hesitate to discuss it with the researcher.

Kind regards

---

**JOHANNES MAKGOBA**  
**RESEARCHER**

## RESEARCH QUESTIONNAIRE

### Section A

Please answer the following general questions

#### 1. Gender

Male	Female

#### 2. Indicate group membership

Designated (i.e Black woman, men; colour woman, men; Indian woman, men; disabled, White women	Non-designated (white male)

#### 3. Age

**Specify**

#### 4. Language

Afrikaans	English	N.Sotho
Venda	Tswana	Tsonga
Swazi	South Sotho	Zulu
Xhosa	Ndebele	

#### 5. Highest Qualification obtained

Secondary school	Standard 10	Post- school certificate/ diploma
National Diploma/ National Higher Diploma	Bachelor's degree or equivalent	Honours degree or Equivalent
Masters degree or equivalent	Doctors degree or equivalent	

#### 6. Job level in the organisation

Non – Managerial	Lower management	Middle Level management
Upper level management	Top Management	

## 7. Socio- economic status

Very higher – level income group ( e.g R400 000 + per year)	High level income Group ( R250 000- R399 000) per year	Medium to high level group (e.g R140 000- R249 000 per year
Medium level income group (R80 000-R139 000 per year)	Medium to low level income group (per year)	Low level income group (e.g less than R40 000 per year)

## SECTION B

1. Strongly disagree
2. Disagree
3. Indifferent
4. Agree
5. Strongly agree

AA is an abbreviation of Affirmative Action.

<b>Please tick the appropriate box</b>	<b>Strongly agree</b>	<b>Agree</b>	<b>Indifferent</b>	<b>Disagree</b>	<b>Strongly disagree</b>
I understand what AA is					
I recognise AA employees					
Employer recognises the value of AA employees					
Employer informs employees about AA policy					
Supervisors are trained to manage diversity					
Employer accommodates AA culture when socialising					
Employer creates conducive environment for AA employees					
Employer avails training opportunities for AA employees					
Employer gives all parties an equal opportunity to influence selection and appointment process					

Employer is transparent when it comes to appointment of new staff including AA employees					
Employer provides mechanisms to protest against discrimination					
Employer enables the employees to appeal against employment decisions					
Employer applies AA rules, procedures strictly and consistently					
Employer adjust systems to integrate AA employees					
Employer applies selection criteria consistently					
Employer uses accurate performance data for evaluation					
Employer uses the same performance standard for all					
Employer gives black managers token positions					
Employer trains employees from designated groups to replace job incumbents					
Employer appoints/promotes less qualified people from designated groups					
Employer uses AA plan and workforce profile people to appoint					
Employer focuses on the development /advancement of employees from designated groups					
Employer uses criteria (ethnicity/gender) in appointment decisions					
Employer fully implement AA within the organisation					
Employer considers AA as window – dressing in your organisation					
Employer gives women key positions in the organisation					

<b>Please tick the appropriate box</b>	Strongly Disagree	Disagree	Indifferent	Agree	Strongly Agree
The demographics of the organisation is in line with the demographics of the area of your municipality					
Suitably qualified internal candidates receive(d) preference over external candidates in recruitment for employment equity purposes					
Formal qualifications is the sole determinant when appointments or promotions are made					
Interviewing panels are representative during interviews					
Affirmative Action is discrimination in reverse					
Political appointments is condoned in municipalities					
Political parties appoint candidates according to their political affiliation					
It is required of the organization to appoint persons from designated group at all times					
Affirmative Action must have priority above efficient service delivery when appointments or promotions are made					
Affirmative Action should be permanent feature in the job market					
Race classification must be removed from all application forms					

**Any other comments** \_\_\_\_\_

## ANNEXURE “B”

### INVOICE FROM THE LANGUAGE EDITOR

Dear Mr Makgoba

Please find below my receipt for the amount of R4 124 which I received from you on 31 October 2011 in payment for the editing of your M thesis.

Kind regards

Lynne Southey

Editor

#### INVOICE

To: Johannes T Makgoba

From: Lynne Southey

Editor

259 Muckleneuk Street  
New Muckleneuk 0181

Income tax No: 1837287646

DATE	DOCUMENT	TASK	@ R30 per 300 word page	AMOUNT
19/10/11	MAGISTER TECHNOLOGIAE	Edit		-
	in the subject			-
	Public Administration		41 251 words	-
			= 138 pages	<b><u>R4 124</u></b>

**PAID R4 124 on 31 October 2011**

#### Bank details:

Bank: FNB  
Account: Cheque  
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Branch: Brooklyn  
Branch Code: 251345

"ANNEXURE C"



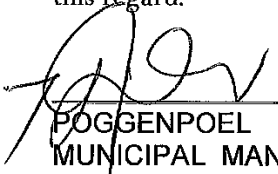
Midvaal Local Municipality  
Contact Details  
PO Box 9, Meyerton, 1960  
Tel: 016-360-7400  
Fax: 016-360-7519  
[www.midvaal.gov.za](http://www.midvaal.gov.za)

12 February 2007

**PERMISSION TO CONDUCT RESEARCH AT MIDVAAL LOCAL MUNICIPALITY**

You are hereby granted permission to conduct a research at Midvaal Local Municipality towards completion of your dissertation in partial fulfillment of a Master in Public Administration.

We would like to wish you success in studies and hope we will be of assistance to you in this regard.

  
POGGENPOEL  
MUNICIPAL MANAGER